

(4)  
No. 92-7247

Supreme Court, U.S.

FILED

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In The  
**Supreme Court of the United States**  
October Term, 1993

DEE FARMER,

*Petitioner,*

v.

EDWARD BRENNAN, WARDEN, ET AL.,

*Respondents.*

On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Seventh Circuit

**JOINT APPENDIX**

ALVIN J. BRONSTEIN  
(Appointed by this Court)  
THE NATIONAL PRISON PROJECT  
OF THE AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION, INC.

Suite 410  
1875 Connecticut Avenue, N.W.  
Washington, D.C. 20009  
(202) 234-4830

*Counsel for Petitioner*

DREW S. DAYS, III  
Solicitor General  
Department of Justice  
Washington, D.C. 20530  
(202) 514-2217

*Counsel for Respondents*

**Petition For Writ Of Certiorari Filed January 1, 1993**  
**Certiorari Granted October 4, 1993**

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- 03/18/92 MOTION BY PLTF. TO FILE DOCU. OUT OF TIME.
  - 03/18/92 AFFIDAVIT OF DEE FARMER.
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\*RECORD SENT TO U.S.S.C.\*
-

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

DEE FARMER,	)	
	)	Case No.
Plaintiff,	)	91-C-716-S
	)	
v.	)	
	)	
EDWARD BRENNAN, ET	)	
AL.,	)	
	)	
Defendants.	)	

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DEFENDANTS' MOTION TO DISMISS

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Defendants, by their attorneys, Kevin C. Potter, United States Attorney for the Western District of Wisconsin, by J.B. Van Hollen, Assistant United States Attorney for that District, hereby move the Court to dismiss the above-entitled action pursuant to Rule 12(b)(1) and (6), Federal Rules of Civil Procedure, and as further grounds for dismissal, defendants move to dismiss pursuant to Rules 12(b)(2) and (5) as it regards to jurisdiction over the persons of L.E. DuBois and N.W. Smith and as L.E. DuBois and N.W. Smith have not been personally served. This motion is based upon the attached memorandum of law and supporting declarations which are incorporated by reference.

Dated this 28th day of October, 1991.

Respectfully submitted,

KEVIN C. POTTER  
United States Attorney

By: /s/ J. B. Van Hollen  
J. B. VAN HOLLEN  
Assistant U.S. Attorney

---

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

(Caption Omitted In Printing)

Civil Action No. 91-C-716-S

**DECLARATION OF LARRY E. DUBOIS**

I, Larry E. DuBois, hereby declare and state as follows:

1. At the time of Plaintiff's transfer in March, 1989, which is the subject of this action, I was employed as Regional Director, North Central Region, Federal Bureau of Prisons. As the Regional Director, North Central Region, I exercised supervisory responsibilities and relied upon my subordinate staff to conduct investigations and process transfers for inmates.
2. I have not received summons and complaint in this case. I have been informed that on August 28, 1991, staff at the North Central Regional Office received summons and complaint by way of U.S. Mail, certified, return receipt requested. I have reviewed the complaint as forwarded to me but have not acknowledged receipt of the complaint or summons, nor have I received service of the complaint and summons in any other manner.
3. Concerning the allegations in the complaint, I necessarily relied upon my subordinate staff to investigate the need for transfer. I have no direct personal knowledge concerning this transfer. I recall no personal involvement in the decision to transfer this inmate from FCI-Oxford to USP-Terre Haute in March 1989.

4. I am not a resident, nor do I own property, operate a business, or have any other connection with or within the State of Wisconsin.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 6, 1991.

/s/ Larry E. DuBois  
Larry E. DuBois  
Former Regional Director  
North Central Region  
Federal Bureau of Prisons

---

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

Civil Action No. 91-C-716-S

(Caption Omitted In Printing)

**DECLARATION OF N.W. SMITH**

I, N.W. Smith, hereby declare and state as follows:

1. At the time of Plaintiff's transfer in March, 1989, which is the subject of this action, I was employed as Correctional Services Administrator, North Central Region, Federal Bureau of Prisons. As the Correctional Services Administrator, North Central Region, I exercised supervisory responsibilities and relied upon my subordinate staff to conduct investigations and process transfers for inmates.
2. I have not received summons and complaint in this case. I have been informed that on August 28, 1991, staff at the North Central Regional Office received summons and complaint by way of U.S. Mail, certified, return receipt requested. I have reviewed the complaint as forwarded to me but have not acknowledged receipt of the complaint or summons, nor have I received service of the complaint and summons in any other manner.
3. Concerning the allegations in the complaint, I necessarily relied upon my subordinate staff to investigate the need for transfer. I have no direct personal knowledge the need for transfer. I have no direct personal knowledge concerning this inmate. I relied upon information provided by the institution which indicated that the plaintiff posed a significant risk to other inmates by his behavior. He was transferred as a result of disciplinary problems.

He had been found guilty by a Disciplinary Hearing Officer of engaging in anal sex with an inmate on the recreation yard of the Special Housing Unit at FCI-Oxford on January 23, 1989. Plaintiff knew since at least March 11, 1988 that he was HIV-positive and he had been counseled on several occasions regarding the grave danger such activity presented to other inmates.

4. This inmate was classified from September 17, 1987 to April 4, 1990 as a Security Classification Level 5 inmate under Bureau of Prisons policy. At FCI-Oxford, he was being housed in a Security Level 4 institution. While USP-Terre Haute still retained the "penitentiary" title conferred by Congress many years ago, it was in fact a Security Level 4 institution by policy at the time of this transfer. This inmate could have been transferred consistent with his security classification to any of the Security Level 5 institutions, which at that time included Lewisburg, Leavenworth and Lompoc. Instead, he was transferred to Terre Haute for the purpose of placing him in a different environment consistent with his individual security needs. The correctional staff at USP-Terre Haute was well equipped in my opinion to handle the problems and needs presented by this inmate, and I relied upon this in my evaluation and decision to transfer.
5. I am not a resident, nor do I own property, operate a business, or have any other connection with or within the State of Wisconsin.

I declare under penalty of perjury that the foregoing is true and correct.



Executed on September 10, 1991.

/s/ N.W. Smith  
N.W. Smith  
Former Correctional Services  
Administrator  
North Central Region  
Federal Bureau of Prisons

---

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

(Caption Omitted In Printing)

91-C-716-S

DECLARATION OF E. J. BRENNAN

I, Edward J. Brennan, hereby declare as follows:

1. That I am currently employed as the Warden of the Federal Correctional Institution (FCI), Oxford, Wisconsin, I have been Warden at the FCI, Oxford since July 19, 1987 to date. I have served in various capacities with the Federal Bureau of Prisons since June 6, 1965.

2. Included among my duties is the responsibility for the care, supervision and control of inmates who have been committed to the custody of the Federal Bureau of Prisons and confined at FCI, Oxford, Wisconsin.

3. Douglas Farmer, Register Number #01499-025, was confined at FCI, Oxford from January 27, 1988 until March 9, 1989. He is currently confined at United States Medical Center, Springfield, Missouri.

4. I understand plaintiff alleges he was sexually assaulted while in general population at United States Penitentiary, Terre Haute, Indiana.

5. That to the best of my knowledge, I had no direct personal involvement in any of the matters alleged in the Complaint, except for signing the Transfer Order dated March 7, 1989. This order authorized transfer of inmate Farmer from FCI, Oxford to United States Penitentiary, Terre Haute, Indiana for disciplinary purposes.

6. I do not have any personal knowledge concerning this assault which allegedly occurred in Indiana on April 1, 1989, nor did I have knowledge of any assaultive behavior and threats plaintiff may be subjected to at USP Terre Haute, Indiana.

7. I certify that any actions I took which may have affected inmate Farmer with respect to the allegations contained in the complaint were taken within the scope of my official duties as Warden at the Federal Correctional Institution, Oxford, Wisconsin.

I declare under penalty of perjury pursuant to Title 28 U.S.C. 1746, that the foregoing is true and correct to the best of my knowledge.

8/30/91  
DATE

/s/ E. J. Brennan  
Edward J. Brennan  
Warden  
FCI, Oxford, Wisconsin

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

91-C-716-S

(Caption Omitted In Printing)

DECLARATION OF DENNIS M. KURZYDLO

I, Dennis M. Kurzydlo, hereby declare as follows:

1. That I am currently employed as a Unit Manager for the Federal Correctional Institution (FCI), Oxford, Wisconsin, I have been Unit Manager at the FCI, Oxford since August 27, 1989 to date. I served in the capacity of Case Manager at FCI, Oxford from July 2, 1979 until August 27, 1989. I also served in the capacity of Correctional Officer with the Federal Bureau of Prisons since November 21, 1976.

2. Included among my duties as Case Manager was the responsibility for preparing progress reports and correspondence regarding inmates as well as serve as a member on an inmate's Unit Team for classification purposes.

3. Douglas Farmer, Register Number #01499-025, was confined at FCI, Oxford from January 27, 1988 until March 9, 1989. He is currently confined at United States Medical Center, Springfield, Missouri.

4. I understand plaintiff alleges he was sexually assaulted on April 1, 1989, while in general population at United States Penitentiary, Terre Haute, Indiana.

5. On January 25, 1989, plaintiff was found guilty by the Disciplinary Hearing Officer of Attempting to Give Anything of Value to Another, Code 328A. This incident

represented Farmer's fourth incident report since his arrival at FCI, Oxford during late January 1988. As a result of this hearing, the Disciplinary Hearing Officer, (DHO) imposed the following sanctions: 15 days Disciplinary Segregation; Forfeit 15 days Statutory Good Time; and Recommend a Disciplinary Transfer. (Enclosed herewith as attachment 1 is a true and correct copy of the Disciplinary Hearing Officers Report and attachments).

6. On January 31, 1989, as part of the transfer recommendation process, I prepared a progress report on plaintiff. (Enclosed herewith as attachment 2 is a true and correct copy of the Progress Report).

7. On February 6, 1989, I also prepared a Request for Transfer memorandum. The rationale for this transfer was based upon plaintiff's involvement in several rule infractions, in particular, use of the telephone to attempt to give another inmate something of value. Additionally, plaintiff was also strongly suspected of engaging in other rule infractions such as abusing the telephone, violating a previous sanction of suspended telephone privileges and intent to commit fraud. As a member of plaintiff's Unit Team, I concurred with the recommendation of the Disciplinary Hearing Officer (DHO) and believed that plaintiff required the security and supervision offered at a Penitentiary. (Enclosed herewith as exhibit 3 is a true and correct of copy Transfer Memorandum dated February 6, 1989).

8. Plaintiff was classified from September 17, 1987 to April 4, 1990 as a Security Classification Level 5 inmate under the Bureau of Prisons policy. At FCI-Oxford, he was being housed in a Security Level 4 institution.

(Enclosed herewith as attachment 4 is a true and correct copy of plaintiffs' inmate history level).

9. While USP-Terre Haute still retained the "penitentiary" title conferred by Congress many years ago, it was in fact a Security Level 4 institution by policy at the time of this transfer. Plaintiff could have transferred consistent with his security classification to any of the Security Level 5 institutions, which at that time included Lewisburg, Leavenworth and Lompoc. Instead, he was transferred to Terre Haute for the purpose of placing him in a different environment consistent with his individual security needs. (Enclosed herewith as attachment 5 is a true and correct copy of Bureau of Prisons Facility by Regional and Level of Security and Custody).

10. In my professional opinion, the correctional staff at USP Terre Haute were well equipped to handle the problems and needs presented by this inmate, and I relied upon this in my evaluation and recommendation to transfer Farmer from FCI, Oxford to USP Terre Haute.

11. I do not have any personal knowledge concerning the alleged assault which occurred in Indiana on April 1, 1989, nor did I have knowledge of any assaultive behavior and threats plaintiff may be subjected to at USP Terre Haute, Indiana.

12. After a thorough review of plaintiff's Central File, I was unable to locate any documentation supporting the assault that plaintiff alleges to have happened.

I certify that any actions I took which may have affected inmate Farmer with respect to the allegations contained in the complaint were taken within the scope of

my official duties as Case Manager at the Federal Correctional Institution, Oxford, Wisconsin.

I declare under penalty of perjury pursuant to Title 28 U.S.C. 1746, that the foregoing is true and correct to the best of my knowledge.

/s/ Dennis M. Kurzydlo  
Dennis M. Kurzydlo  
 Former Case Manager  
 FCI, Oxford, Wisconsin

10-24-91  
 DATE

Discipline Hearing Office (DHO) Report  
 U.S. Department of Justice  
 Federal Bureau of Prisons

FCI, Oxford, Wisconsin Four  
 institution Institution Security Level  
 NAME OF INMATE FARMER, Douglas REG. NO:  
23288-037 UNIT: SA

Date of Incident Report: 11-23-88

Offense Code: 219/406

Date of Incident: 11-21-88

Summary of Charge(s): Stealing/Unauthorized Use of the Telephone

I. NOTICE OF CHARGE(S)

A. Advanced written notice of charge (copy of Incident Report) was given to inmate on (date) 11-23-88 at (time) 1:38PM (by staff member) T. Pierce, Acting Lieutenant

B. The DHO Hearing was held on (date) January 4, 1989 at (time) 1:26PM

C. The inmate was advised of the rights before the DHO by (staff member) D. Kurzydlo, Case Manager on (date) 11-29-88 and a copy of the advisement of rights form is attached.

II. STAFF REPRESENTATIVE

A. Inmate waived right to staff representative. Yes  
 \_\_\_ No XX.

B. Inmate requested staff representative and Mark Ciske, Corr, Counselor appeared.



C. Requested staff representative declined or could not appear but inmate was advised of option to postpone hearing to obtain another staff representative with the result that N/A

D. A staff representative N/A was appointed.

### III. PRESENTATION OF EVIDENCE

A. Inmate (~~XX~~) (denies) the charge(s).

B. Summary of Inmate Statement:

Mr. Cowan advised the inmate of his rights before the DHO. Inmate stated he understood his rights. It is noted in the report that inmate Farmer initially requested a staff representative, but when inmate Farmer was in the hearing room on a previous incident report, he stated he would proceed without a staff representative. Inmate Farmer then initialed on the Notice of Disciplinary Hearing form that he no longer wanted a staff representative. Farmer submitted a written statement to the DHO which is attached to this report. (Continued on attached sheet)

C. Witnesses:

1. The inmate requested witnesses. Yes XX No XX.

2. The following persons were called as witnesses at this hearing and appeared: (See Page Two)

3. A summary of the testimony of each witness is attached XX

Name of Inmate: FARMER, Douglas

XX Reg. No.: 23288-037

Date: January 4, 1989

### III. C. (Continued)

4. The following persons requested were not called for the reason(s) given:

(See Attached Memorandum from Ms. DeVaney regarding inmate Williams #18845-044)

5. Unavailable witnesses were requested to submit written statements and those statements received were considered N/A

D. Documentary Evidence: In addition to the Incident Report and Investigation, the DHO considered the following documents: Memoranda from Ms. Torres, Ms. DeVaney, Mr. Wertenberger, written statement of inmate Williams, investigative report from Mr. Wertenberger

E. Confidential information was used by the DHO in support of his findings, but was not revealed to the inmate. The confidential information was documented in a separate record. The confidential informant has been (confidential informants have been) determined to be reliable because N/A.

### IV. FINDINGS OF THE DHO

XX A. The act was committed as charged.

XXX B. The following act was committed:  
Code: 328A - Attempting To Give Anything of Value

XX C. No prohibited act was committed:  
Expunge according to Inmate Discipline PS.

V. SPECIFIC EVIDENCE RELIED ON TO SUPPORT FINDINGS (Physical evidence, observations, written documentation, etc.) The report of the reporting officer which states that upon the conclusion of an extensive investigation, it has been determined that inmate Farmer used the telephone on November 21, 1988 and ordered fruit baskets and flowers from Johnson's Garden Capitol, Gaithersburg, Maryland. The total amount of this transaction was \$596.25 and inmate Farmer used a Visa Credit Card to make these purchases. Inmate farmer ordered these items from an individual names "Missy" and investigation has established there is a "Missy" employed at Johnson's Garden Capitol.

(Continued on attached sheet)

#### VI. SANCTION OR ACTION TAKEN

Offense Severity Moderate

SGT Available 91

15 Days Disciplinary Segregation:

Forfeit 15 Days Statutory Good Time; Recommend a Disciplinary Transfer.

#### VII. REASON FOR SANCTION OR ACTION TAKEN

Attempting to give anything of value to another is in violation of the rules and regulations of the institution. Previously imposed sanctions for similar offenses have failed to effect a positive change in inmate Farmer's institutional behavior and attitude, therefore, it is felt by the DHO that the recommendation for a disciplinary transfer is warranted.

VIII. APPEAL RIGHTS: XXX The inmate has been advised of the findings, specific evidence relied on, action and reasons for the action. The inmate has been advised of his right to appeal this action within 20 calendar days under the Administrative Remedy Procedure. A copy of this report has been given to the inmate. CENTRAL FILE

#### IX. Discipline Hearing Officer

	/s/ <u>Illegible</u>	<u>1/26/89</u>
Printed Name	Signature	Date

Delivered to Inmate: 1-31-89 /s/ Illegible

### Progress Report

U.S. Department of Justice  
Federal Bureau of Prisons

FCI, Oxford, WI  
institution

Jan. 31, 1989  
Date

If you have a presumptive parole date, any IDC actions referred to in this report will be considered by the U.S. Parole Commission as a basis for possible rescission of your parole date. You may present documentary evidence (including voluntary statements of witnesses) in mitigation of your misconduct, and you may request to review all disclosable documents that will be considered by the Commission.

Inmate Reviewed and/or Received Copy:

/s/ <u>Illegible</u>	<u>2/1/89</u>	<u>Dennis Murphy</u>
Inmate's Signature	Date	Staff Signature

1. Type of Progress Report:

Initial: \_\_\_\_; Statutory Interim: \_\_\_\_; Pre-Release: \_\_\_\_

Transfer: XX; Other (specify): \_\_\_\_

2. Name: FARMER, Douglas

3. Reg. No: 23288-037

4. Age (DOB): 23 (05-03-65)

5. Present Security/Custody Level: 5/IN

6. Offense: Fraudulant Use Of Credit Cards

7. Sentence: 20 Years Regular Adult
8. Sentence Began: 08-05-86
9. Months Served: 29
10. Days EGT: 12
11. Days FGT/WGT: 134/50
12. Tentative Release: 06-28-2000
13. Last Commission Action/Date: None.
14. Detainers/Pending Charges: Sheriff's Office, Baltimore County, Towson, Maryland - 30 Year Consecutive State sentence following conviction for offenses of Theft and Attempted Theft.
15. Co-defendants: CAMPBELL, Lowell W.; HARDIN, Ronald; CORNISH, Keith D.; LEWIS, Clara C.

Distribution: Original - Inmate File; Copies to U.S. Probation Office, Parole Commission Regional Office, Inmate

PHOTO-COPY COMPLETED FORM AS NECESSARY

#### 16. SUMMARY OF PRIOR PROGRESS REPORTS:

Farmer's previous progress report was prepared for transfer purposes and it reflected the initial 15 months of this period of incarceration. During that time, it appears that Farmer did not maintain employment nor did he participate in any self-improvement programs. Further, he received numerous incident reports. Specifically, Farmer was initially designated to the USP, Lewisburg, Pennsylvania where he was received on November 7, 1986.



Little information is available regarding his progress at that institution and it appears that he spent a majority of his stay at that institution in Administrative Detention. On May 13, 1987, Farmer was received at the FCI, Petersburg, West Virginia. While at that institution, Farmer was in the detention unit a good deal of time and as a result, he did not maintain employment nor did he participate in any self-improvement programs. Generally, he did not maintain open relationships with various staff members. Further, he received numerous incident reports. During 1986, Farmer was found to be guilty of Unauthorized Use of the Mail or Telephone and Unauthorized Contact With The Public. During 1987, Farmer was found to be guilty of Possession of Anything Not Authorized (two counts); Possession, Introduction or Use of Any Narcotic; Failing To Follow Safety or Sanitation Regulations; Counterfeiting, Forging or Unauthorized Reproduction of Any Document; Attempted Stealing (three incidents); and Unauthorized Use of the Mail or Telephone. Sanctions imposed for these infractions include placement in Disciplinary Segregation and the forfeiture/withholding of Statutory Good Time. Because of his misconduct, Farmer was redesignated to the FCI, Oxford, Wisconsin for disciplinary purposes, where he was received on January 27, 1988.

#### 17. NEW INFORMATION:

There is no new information to report regarding current offense, prior record or social situation.

#### 18. INSTITUTIONAL ADJUSTMENT:

- A. *Program Plan:* Farmer met with members of his Unit Team for purposes of reclassification on February 16, 1988. Goals established at that time include, securing employment with UNICOR, participating in the Post-Secondary Education Program and participating in both individual and group counseling programs. Since establishing these goals, some progress has been made toward their achievement as outlined in this report.
- B. *Work Assignments:* Shortly after his arrival at this institution during January 1988, Farmer secured employment with the institution's Labor I Crew. While assigned to this area, he received average work reports. During September 1988, Farmer elected to accept preferred employment with UNICOR's Electric Cable Factory. He was assigned to this area for approximately two months at which time he was placed in Administrative Detention. No work reports are available regarding his progress with UNICOR.
- C. *Educational/Vocational Participation:* Records indicate that Farmer has completed the requirements for his high school equivalency diploma. During September 1988, Farmer enrolled in the Post-Secondary Education Program but was precluded from finishing the semester due to his placement in Administrative Detention.



D. *Relationship with Staff:* At past program reviews, Farmer received favorable quarters reports. Discussions with Unit Officers indicate that he is a cooperative individual but yet one who warrants closer supervision. Farmer's relationships with members of his Unit Team are considered to be positive.

E. *Incident Reports:*

DHO

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>
04-04-88	Poss., Introd., or Use of Any Narcotics (109A); Lying or Providing A-False Statement to a Staff Member (313); Counterfeiting or Forging (314)	FF 45 days SGT; 30 days D/S (suspend pending one year clear conduct).
05-25-88	Giving Money or Anything of Value to, or Accepting Money or Anything of Value From, Another Inmate (328A)	15 days D/S; FF 10 days SGT.

08-01-88	Stealing (219); Insolence (312)	FF 10 days SGT; suspend telephone privileges for one year; 15 days D/S; recommend disc. transfer (suspend pending one year clear conduct).
01-20-89	Giving Money or Anything of Value to, or Accepting [sic] Money or Anything of Value From, Another Inmate (328A)	15 days D/S; FF 15 days SGT; recommend disc. transfer.

F. *Community Programs:* During this period of incarceration, Farmer has not participated in any community programs, furloughs or trips.

G. *Institutional Movement:* Farmer was initially designated to the USMCFP, Springfield, Missouri for purposes of medical treatment. He was received at that institution on August 15, 1986. Following the completion of medical treatment, Farmer was designated to the USP, Lewisburg, Pennsylvania where he was received on November 7, 1986. It was determined that the environment at Lewisburg was not safe for Farmer and as a result, he was redesignated to the FCI, Petersburg, West Virginia where he was received on May 13, 1987. On January 27, 1988, Farmer

was received here at the FCI, Oxford, Wisconsin for disciplinary purposes.

H. *Physical and Mental Health*: Farmer appears to be a fully employable individual who has not experienced any serious physical or emotional problems during this period of incarceration. He is currently classified as "regular duty status" with the restrictions that he not work in the Food Service Department, not lift weight more than 20 pounds and not be required to stand for a prolonged period of time.

I. *Progress On Financial Plan*: Farmer has paid \$45.30 of the \$100 special assessment fee imposed by the sentencing court.

19. *RELEASE PLANNING*:

Because of the length of time he has yet to serve, specific release plans have not been formulated. Most probably, Farmer will return to the Baltimore, Maryland area where he has spent most of his life.

A. *Residence*: To be determined.

B. *Employment*: To be determined.

C. *U.S.P.O.*: David E. Johnson  
Chief U. S. Probation Officer  
Room 6.100 U. S. Courthouse  
101 W. Lombard Street  
Baltimore, Maryland 21201-2669

21. Dictated by: /s/ Dennis M. Kurzydlo 01-31-89  
Dennis M. Kurzydlo, Case Manager  
Date

22. Reviewed by: /s/ Dennis Head 2/1/89  
Dennis Head, Unit Manager Date

DMK:lg

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UNITED STATES GOVERNMENT  
memorandum

Federal Correctional Institution  
Oxford, Wisconsin 53952-0500

DATE: February 6, 1989

REPLY TO

ATTN OF: E. J. Brenna, Warden

SUBJECT: Request for Transfer

TO: L. E. DuBois, Regional Director

ATTN: N. W. Smith, Correctional Services Administrator

1. Name and Reg. No. FARMER, Douglas #23288-037
2. Rationale for Redesignation: As the attached documents indicate, Farmer became involved in an incident in this institution during November 1988 which involved his use of the telephone to attempt to give another inmate something of value. This incident is strongly suspected of involving other infractions such as abusing the telephone, violating a previous sanction of suspended telephone privileges and intent to commit fraud. This incident represents Farmer's fourth incident report since his arrival at this institution during late January 1988. The DHO has recommended that Farmer be transferred for disciplinary purposes. Members of his Unit Team all concur with this recommendation and believe that Farmer requires the security and supervision offered at a Penitentiary.
3. Propose Transfer Code: 309 - disciplinary

4. CIM Assignment: Farmer is not a Central Inmate Monitoring case.
5. Release Destination: Baltimore, Maryland
6. Institution(s) Recommended: USP, Leavenworth, Kansas
7. Mode of Transportation: Prison bus.
8. Medical Status: Farmer is presently classified as "regular duty status" with some limitations.
9. Does the inmate concur with the transfer? N/A
10. Additional Pertinent Information: Farmer is presently in Disciplinary Segregation and is pending a DHO hearing for the infraction of Engaging In A Sexual Act.

Prepared by: /s/ Dennis Kurzydlo  
Dennis Kurzydlo, Case Manager - Sauk Unit

Reviewed by: \_\_\_\_\_  
Dennis Head, Unit Manager - Sauk Unit

Reviewed by: \_\_\_\_\_  
J. R. Cowan, CIM Coordinator

FACILITY BY REGION AND LEVEL OF SECURITY AND CUSTODY

SECURITY LEVEL	NORTHEAST	SOUTHEAST	NORTH CENTRAL	SOUTH CENTRAL	WESTERN	CUSTODY
1	Allenwood Danbury Camp Lewisburg Camp Petersburg Camp	Eglin Maxwell Lexington Atlanta Camp	Leavenworth Camp Marion Camp Terre Haute Camp Duluth Oxford Camp	Ft. Worth Big Spring La Tuna Camp El Reno Camp Texarkana Camp	Lompoc Camp Boron	OUT COMMUNITY
2	Danbury Loretto (SL 1 & 2)	Tallahassee	Sandstone	La Tuna, Seagoville	Safford	IN, OUT COMMUNITY
3	Raybrook Otisville	Ashland	Milan* Springfield Gen. Pop (SL-2 & SL-3)	Texarkana	Terminal Island*	IN, OUT COMMUNITY
4	Petersburg	Memphis* Talladega*	Oxford Terre Haute	Bastrop* (SL-3 & SL-4) El Reno	Phoenix	IN, OUT
5	Lewisburg		Leavenworth		Lompoc	MAXIMUM IN
6			Marion			MAXIMUM IN
Administrative Facilities	Alderson Morgantown (YCA) New York	Atlanta (INS Detention) Butner Miami	Chicago Springfield (Medical & Psychiatric) Rochester		Englewood (YCA) Pleasanton San Diego Tucson	ALL CUSTODY LEVELS

\* Also has a Jail Unit.



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 91-C-716-S

(Caption Omitted In Printing)

DEFENDANT KURZYDLO'S RESPONSE TO  
PLAINTIFFS FIRST SET OF INTERROGATORIES

1. *QUESTION:* Please state your full name, current place of employment and current position.

*ANSWER:* Dennis M. Kurzydlo. I am currently employed as a Unit Manager for the Federal Correctional Institution (FCI), Oxford, Wisconsin.

2. *QUESTION:* During the plaintiff's confinement at FCI Oxford what was your relationship to her, if any? (if there was inmate-prison official relationship, please state date upon which it began)

*ANSWER:* During plaintiffs' confinement at FCI-Oxford, I was assigned as his Case Manager. To the best of my recollection, I was inmate Farmer's Case Manager since the latter part of 1988.

3. *QUESTION:* Did there come a time when you recommended or initiated a transfer of the plaintiff? (if so, describe the manner in which such was performed, describing all documents relevant thereto).

*ANSWER:* On January 20, 1989, the Disciplinary Hearing Officer at FCI, Oxford, Wisconsin found plaintiff to be guilty of the infraction of Attempting to Give Money or Anything of Value to Another Inmate. One sanction imposed was that a recommendation be made to the Bureau of Prisons, North Central Regional Office for a

disciplinary transfer. As plaintiff's case manager, I was responsible for preparing a Progress Report and transfer memorandum. The Progress Report is a comprehensive report of the inmate's progress while incarcerated. The transfer memorandum provides a rationale for redesignation not found in the Progress Report. Along with these, I compiled a packet which included copies of documents relating to the incident, a copy of plaintiff's Presentence Investigation Report and copies of his classification material.

4. *QUESTION:* If your answer to interrogatory 3 is in the affirmative, please state the person(s) which you sent or otherwise referred the plaintiff's transfer packet to for review, approval, etc.)

*ANSWER:* I sent the plaintiff's transfer packet to Unit Manager Dennis Head for review.

5. *QUESTION:* If your answer to interrogatory 3 is in the affirmative, please state if in recommending or considering plaintiff for transfer did you consider or include information relevant to the plaintiff's transsexualism? (if your answer is in the affirmative state what information was included, if your answer is to the negative, state the reasons you did not include such information)

*ANSWER:* Object to the form of the question as being vague and ambiguous. It is not clear whether the question being asked is if the transfer was based on plaintiff's transsexualism, or if plaintiff's transsexualism was known to me at the time of the recommendation.

6. *QUESTION:* Does the Bureau of Prisons policies take into account a fact that an inmate may be or is a transsexual with regard to designation? (if yes, identify the policy completely)

*ANSWER:* An inmate's overt sexual affectation is considered in determining a place of confinement, but this is only one of many more dominant factors. In most instances, this issue can be managed at the institutional level.

7. *QUESTION:* In your submissions for the plaintiff's transfer did you recommend that the plaintiff be placed in a penitentiary?

*ANSWER:* Yes, I recommended USP, Leavenworth, Kansas, because it was a security level "5" institution.

8. *QUESTION:* If your answer to interrogatory 7 is in the affirmative, state the "specific" reasons why you believe the plaintiff should have been confined in a penitentiary?

*ANSWER:* I believed the plaintiff should have been confined in a security level "5" penitentiary and not just any penitentiary or FCI because plaintiff had been given two opportunities to function in a Security Level "4" institution, but became a management problem due to his failure to abide by the rules at both institutions. A computation of his security needs based on Bureau of Prisons's policy at that time, indicated that plaintiff required the security offered in a security level "5" institution.

9. *QUESTION:* What precisely can the penitentiary offer with regard to the confinement of the plaintiff that could not be provided in an FCI such as Oxford?

*ANSWER:* Not all penitentiaries can necessarily offer anything with regard to the confinement of the plaintiff that could not be provided in an FCI such as Oxford, however, the security level "5" institution at USP Leavenworth, Kansas, was designed to have greater security measures and a greater staffing ratio than FCI-Oxford.

10. *QUESTION:* Do you believe or know of the federal penitentiaries' to house violent or non-violent offenders?

*ANSWER:* I believe all secure institutions have a combination of both violent and non-violent offenders.

11. *QUESTION:* In your review of the plaintiffs' records and/or based on the facts known to you about the plaintiff would you contend the plaintiff to be violent or non-violent person?

*ANSWER:* Object to the form of the question as being vague and ambiguous as it is not clear what plaintiff means by the terms violent or non-violent person.

12. *QUESTION:* Do you consider the plaintiff to be an effeminate individual?

*ANSWER:* Object to the form of the question as being vague and ambiguous as plaintiff's definition of effeminate individual is unclear.

13. *QUESTION:* If your answer to interrogatory 12 is in the affirmative state if you believe such would jeopardize the plaintiffs' safety in a penitentiary environment?

*ANSWER:* Not applicable.

14. *QUESTION:* What position did you hold prior to your current employment?

*ANSWER:* My prior position with the Bureau of Prisons was as a case manager.

15. *QUESTION:* Have you ever been convicted or arrested for a crime?

*ANSWER:* Object to the form of the question, as this request does not comply with Rule 609, Federal Rules of Civil Procedure.

I have read the answers to Plaintiff's First set of interrogatories prepared on my behalf. I declare under penalty of perjury pursuant to 28 U.S.C. 1746, that they are true and correct to the best of my knowledge.

/s/ Dennis M. Kurzydlo  
Dennis M. Kurzydlo  
Former Case Manager  
FCI, Oxford, Wisconsin

Dated this 1st day of November, 1991.

Respectfully submitted,

KEVIN C. POTTER  
United States Attorney

/s/ J.B. Van Hollen  
 BY: J.B. VAN HOLLEN  
 Assistant U.S. Attorney  
 Federal Courthouse  
 Room 420  
 120 N. Henry Street  
 Madison, WI 53703

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(Certificate Of Service Omitted In Printing)

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Dee Farmer  
 Register Number 23288-037  
 United States Medical Center  
 for Federal Prisoners'  
 Post office Box 4000  
 Springfield, Missouri 65808

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WISCONSIN

(Caption Omitted In Printing)

Civil Action No. 91-C-716-S

DECLARATION OF DEE FARMER

I, Dee Farmer, hereby declare and state as follows:

1. From January, 1988 to March 9, 1989 I was a inmate confined at the Federal Correctional Institution (FCI), Oxford, Wisconsin. During, my confinement at FCI-Oxford I submitted administrative remedies to Defendants BRENNAN, and DUBOIS that specifically concerned my transsexualism. Defendants KURZYDLO and BRENNAN was also aware of my transsexuality through records in my Central File maintained by them and their personal observation of me on a regular basis. Defendant Smith was aware of my transsexuality through the transfer packet sent to him by Defendant Kurzydlo, well as documents sent by the Associate Warden of FCI-Oxford in February, 1989.

2. With regard to their personal involvement in the designation and placement of me at USP-Terre Haute where I was sexually assaulted, [sic] each of them contributed to the designation by ignoring Bureau of Prisons policy that requires ordinarily for transsexual offenders to be housed in co-correctional institutions. Nevertheless,



they either directly participated in the transfer or permitted it to occur knowing the risk that I would be subjected to.

3. During Defendant DUBOIS and SMITH employment with the Bureau of Prisons North Central Office they had frequent contacts with FCI-Oxford which were continuous [sic] and systematic throughout their employment in said Region. Specifically, Defendant DUBOIS handled all administrative remedies and controlled housing matters arising out of FCI-Oxford. While Defendant SMITH handled every transfer of disciplinary nature arising out of FCI-Oxford. Though, Defendants DUBOIS and SMITH had other responsibilities that required them to have contact with FCI-Oxford these duties alone required continuous [sic] contact.

4. I have no knowledge of the manner in which the summons and complaint was served on any other defendants. As a pro'se plaintiff I filed my complaint with the Court and the Court instructs' the U.S. Marshals' to conduct service of process. To the best of my knowledge, the type of service generally conducted by the U.S. Marshal's is sufficient and accordance with law.

I declare under the penalty of perjury that the foregoing is true and correct.

/s/ Dee Farmer  
DEE FARMER

12-3-91

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Dee Farmer  
Register Number 25288-037  
United States Medical Center  
for Federal Prisoners'  
Post Office Box 4000  
Springfield, Missouri 65808

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

(Caption Omitted In Printing)

Plaintiffs' First Amended Complaint for Damages  
and Injunctive relief

Civil Action  
No. 91-C-716-S

I.

INTRODUCTION

1. Plaintiff is a prisoner of the United States of America serving a twenty (20) year term of commitment in the custody of the Attorney General of the United States. She is presently incarcerated at the United States Medical Center - Springfield, Missouri. Plaintiff is a pre-operate [sic] male-to-female transsexual (although plaintiff is a genetic or biologic male, plaintiff will for the purposes of this action, be referred to herein in the feminine pronoun.) Essentially this complaint rests upon a claim that her constitutional and civil rights have been at all times mentioned herein violated by the defendants, due to their deliberate indifference to her safety, [sic] arising from their inappropriate [sic] classification, designation and housing of her, as a transsexual, in a penitentiary that has a violent environment, knowing such would

endanger her life and indeed did result in her being harass, [sic] threaten [sic] and sexually assaulted. [sic]

## II.

### JURISDICTION

2. This is a civil action authorized by 28 U.S.C. § 1331 to redress the deprivation, under color of United States law, of rights secured by the Constitution and laws of the United States. Jurisdiction of this Court is also founded directly upon the Fifth and Eighth Amendment to the United States Constitution. Further, this Courts' jurisdiction of plaintiffs' claim for monatory [sic] damages is authorized by *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

3. This Courts' pendent jurisdiction is also invoked for violation of Wisconsin laws.

4. This Court has venue jurisdiction pursuant to 28 U.S.C. 1391(e) which authorize suit against federal official, acting under color of federal law, in his official capacity [sic] in any judicial district in which . . . a defendant resides. Defendant BRENNAN and KURZYDLO reside in the Western District of Wisconsin. The Court has personal jurisdiction of each defendant pursuant to 28 U.S.C. § 1391(b) inasmuch the actions complained of that are alleged to have occurred at the Federal Correctional Institution, Oxford, Wisconsin, are in or arose within this Courts' judicial district. Even though, there [sic] actions complained of that have allegedly occurred at other institutions in the Federal Prison System, said actions are consequences of the actions herein complained of arising

at the Federal Correctional Institution, Oxford, Wisconsin, within this Courts' judicial district.

## III.

### PLAINTIFF

5. Plaintiff DEE FARMER is, and at all times mentioned herein, was in the custody of the United States Bureau of Prisons, as a result of being committed to the custody of the Attorney General of the United States for a period of twenty (20) years for conviction of violation of 18 U.S.C. § 1029, under the provisions of 18 U.S.C. § 4205(b)(2). Plaintiff is of legal age and comptent [sic] to testify to the facts stated herein. She is currently incarcerated at the United States Medical Center for Federal Prisoners' - Springfield, Missouri, a facility of the Bureau of Prisons.

## IV.

### DEFENDANTS

6. Defendant J. MICHAEL QUINLIN is, and at all times mentioned herein was, the duly appointed Director of the United States Bureau of Prisons (hereinafter "the Bureau" or "the director") and maintains offices in Washington, D.C. Defendant QUINLAN daily promulgates rules, regulations, directives, and policies and executes the same through his agents and agents of the United States of America. Further at all times relevent [sic] herein, defendant QUINLAN executed the rules, regulations, directives and policies of the Bureau through his agents and agents of the United State [sic] of America.

Defendant QUINLAN has the ability to daily control or cause to be controlled the conditions and environment in which the plaintiff resides while incarcerated now or in the future within the Federal Bureau of Prisons' system.

7. Defendant QUINLAN is sued in his official capacity only as Director of the Federal Bureau of Prisons. At all times mentioned in this complaint defendant QUINLAN acted under color of United States law.

8. Defendant CALVIN EDWARDS is, and at all times mentioned herein, was North Central Regional Director of the Federal Bureau of Prisons (hereinafter "Regional Director" or "EDWARDS"), the Warden of the United States Penitentiary (hereinafter "USP" or "penitentiary") in Lewisburg, Pennsylvania or Terre Haute, Indiana. Further at all times relevant [sic] herein Defendant EDWARDS daily was or is responsible for the management of USP-Lewisburg, Pennsylvania, USP-Terre Haute, Indiana or Bureau institutions and programs within the North Central Region and for such other duties as may be delegated by the Bureaus' Central Office in Washington, D.C. Defendant EDWARDS has the ability to daily control or cause to be controlled the conditions and environment in which plaintiff resides while incarcerated in the Federal Bureau of Prisons system.

9. Defendant EDWARDS is sued in his official capacity [sic] only as Regional Director and Former Warden of USP-Terre Haute, Indiana and USP-Lewisburg, Pennsylvania. At all times mentioned in this complaint defendant EDWARDS acted under color of United States law.

10. Defendant EDWARD BRENNAN is, and at all times mentioned herein was, Warden of the Federal Correctional Institution, Oxford, Wisconsin 53952. Defendant BRENNAN daily had the ability to directly control or cause to be controlled the conditions and environment in which plaintiff resided or was transferred to while incarcerated at FCI-Oxford.

11. Defendant BRENNAN is sued in his individual capacity [sic] as well as his capacity [sic] as Warden of FCI-Oxford. At all times mentioned in this complaint, Warden BRENNAN acted under color of United States law.

12. Defendant DENNIS KURZYDLO is, and at all times mentioned herein was, Case Manager [sic] at FCI-Oxford (hereinafter "Case Manager [sic] KURZYDLO" or "KURZYDLO") and maintains his office at FCI-Oxford, Wisconsin 53952. Defendant KURZYDLO daily is responsible for the case management operations of inmates delegated to him by or through Warden BRENNAN, FCI-Oxford, Wisconsin. Defendant KURZYDLO had the ability to daily control or cause to be controlled, either directly or indirectly, the conditions and environment which the plaintiff resided or was transferred to while incarcerated at FCI-Oxford.

13. Defendant KURZYDLO is sued in his individual capacity, [sic] as well as in his official capacity [sic] as Case Manager. [sic] At all times mentioned in this complaint, Defendant KURZYDLO acted under color of United States law.

14. Defendant LARRY E. DUBOIS was at all times mentioned herein, North Central Region Regional Director of the Federal Bureau of Prisons (hereinafter "Former



Regional Director" or "DUBOIS"), and maintained his office at 10920 Ambassador Drive, Air World Center, Kansas City, Missouri 64153. Further, at all times relevant [sic] herein Defendant DUBOIS daily was responsible for the management of Bureau institutions and programs within the North Central Region and for such other duties as may have been delegated by the Bureau's Central Office in Washington, D.C. Defendant DUBOIS had/has the ability to daily control or cause to be controlled the conditions and environment in which plaintiff resided or was transferred to while incarcerated in Bureau's institutions within the North Central Region.

15. Defendant DUBOIS is sued in his individual capacity [sic] as well as his official capacity [sic] as Former North Central Region Regional Director of the Federal Bureau of Prisons. At all times mentioned in this complaint, Defendant DUBOIS acted under color of United States law.

16. Defendant N.W. SMITH was at all times mentioned herein Correctional Services Administrator (hereinafter "Former Administrator" or "SMITH") and maintained his office at 10920 Ambassador Drive, Air World Center, Kansas City, Missouri 64153. Defendant SMITH daily was responsible for the designations of inmates within the Bureaus' North Central Region institutions. Defendant SMITH had the ability to control or cause to be controlled the conditions and environment in which plaintiff resided or was transferred to while incarcerated in Bureau's institutions within the North Central Region.

17. Defendant SMITH is sued in his individual capacity [sic] as well as his official capacity [sic] as Former Administrator. At all times mentioned in this complaint, Defendant SMITH acted under color of United States law.

## V.

### STATEMENT OF FACTS

#### A.

#### Plaintiffs' Transsexualism

18. Plaintiff is a biologic male whom at an early age began to identify more with the female gender. Her childhood is remarkable for feminine interest and mannerisms with a dislike for male orientated activities.

19. By the age of fifteen (15) years old, plaintiff overtly began to demonstrate her obsession with the female gender. Specifically, she began to live in the female gender, full-time, by dressing and conducting herself, thoroughly and consistently as a female.

20. In attempt to further disassociate herself with the male gender and in pursuit [sic] of Sex Reassignment Surgery, plaintiff without psychological counseling or medical consultation, illegitimately had unsuccessful scrotal surgical procedure in 1980 on the black market in New York City.

21. In 1984, plaintiff entered the New York Breast Clinic where she had silicone (base) injections and hormone treatment. Plaintiff had been on Premarin, a female hormone for several years prior to her arrest.



22. Upon her commitment to the Bureau of Prisons, plaintiff continued to be obsess [sic] with ridding herself of her primary male sex-organs and features and obtaining those of the female gender. This fact is evident from the numerous administrative and judicial complaints, the plaintiff has filed with appropriate [sic] offices' of the Bureau, including the named defendants', as set forth hereinafter.

23. Moreover, plaintiff has on several occasions introduced female hormones into the Bureau of Prisons institutions and consumed the same without medical supervision. Also, plaintiff has been disciplined by prison officials, Federal Bureau of Prisons for attempting to introduce Premarin, female estrogen into Bureau institutions without authorization.

24. Plaintiffs' complexities related to her transsexualism has only been magnified during her commitment in Bureau institutions, within the last year plaintiff has indicated to employees of the Bureau, her desire and intentions to perform self-castration.

25. The aforementioned facts are those recognized by the American Psychiatric Association and the Harry Benjamin International Gender Dysphoria Association as constituting the diagnosis of transsexualism, a mental disorder. Consistent, with recognized standards qualified professionals diagnosed the plaintiff as a transsexual prior to incarceration and even after her commitment, the Bureau's medical and psychiatric personnel also diagnosed and documented the plaintiff as a transsexual.

26. Records compiled and maintained by the Bureau of Prisons also describe the plaintiff as a non-violent,

passive individual who projects feminine characteristics, both mentally and physically. It is further noted, that she is likely to experience a number of difficulties in incarceration. Because of her youth and feminine appearance she is likely to experience a great deal of sexual pressure.

27. Each of the facts stated in paragraphs 18, 19, 20, 21, 22, 23, 24, 25 and 26 were known to Defendants EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH at the times of their alleged actions or inactions resulting in the alleged violations complained of herein, as set forth hereinafter in full and detail, respectively.

#### B.

##### Failure to Ensure Safety [sic] of Plaintiff, as a Transsexual

28. Though, there are few transsexual offenders committed to the Federal Bureau of Prisons, it is a documented fact that transsexuals present a unique management problem in a correctional setting. Case law and correctional records reveal that the placement of pre-operative male-to-female transsexuals in an all male institution has resulted in them being threaten [sic] and sexually assaulted [sic] by fellow inmates and prison guards. Irrespective of the extent of their feminine appearance, said transsexuals become the target of sexual approaches from fellow inmates, because of their feminine interest and characteristics which often leads to them being raped and abused. The greater said transsexual appearance, characteristics, interest and mannerisms are to the female gender the probability of sexual assault [sic] increases' and in most instances is inevitable.

29. Upon information and belief, the environment of the institution is one of the most substantial aspects in determining the probability that said transsexual will be able to safely function within the institution. As institution with a violent environment is one where said transsexual will inevitably be raped. A violent environment in a penal setting would be one composed of prisoners with serious prior convictions, violent and drug related crimes and prison disciplinary infractions and substantial sentences of imprisonment.

30. Bureau of Prisons, Health Service Manual, 6000.2, Section 6805 entitled Transsexuals, provides that transsexuals will ordinarily be placed in co-correctional facilities. The method by which they are intergrated [sic] into the correctional setting will be determined by Institution Supplement.

31. However, inmates designations are determine [sic] by Bureau of Prisons, Security and Custody Classification Manual which set forths the guidelines for determining inmates security and custody level and assigns certain levels to each institution, except for institutions designated as administrative. At all times mentioned herein the Bureau of Prisons institutions were assigned security levels 1-6 and custody levels of in, out and max. Security level 1 was the less restrictive and 5 the highest, per say [sic]. Inasmuch their [sic] is only one level 6 institution, United States Penitentiary, Marion, Illinois. With regard to custody levels out is the lowest in medium and max highest. This policy has no provisions for the designation of transsexual offenders.

32. Currently, Bureau of Prisons Security and Custody Classification Manual devides [sic] institutions into the categories of low, medium and high, well as administrative. It continues the Bureaus' previous provisions regarding custody levels. This latest policy is also viod [sic] of any provision regarding the designation of transsexual offenders.

33. Neither, Bureau of Prisons Security and Custody Classification Manuals referenced the provisions of Bureau of Prisons Health Service Manual regarding transsexual offenders ordinarily being placed in co-correctional facilities.

34. Defendant QUINLAN, at all times mentioned herein disregarded his responsibility to establish an effective policy on the housing and designation of transsexual offenders. He also failed to enfore [sic] existing Bureau policy regarding transsexual or ensure observance or adherence thereto.

35. Defendants' EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH failed to adhere, consider or observe the Bureaus' policy regarding transsexual offenders' in designating and transferring the plaintiff.

C.

#### COMMITMENT TO BUREAU OF PRISONS

36. On or about August 14, 1986 United States Marshals' transported the plaintiff to the United States Penitentiary in Lewisburg, Pennsylvania, and than [sic] on the following day to the United States Medical Center for

federal Prisoners' in Springfield, Missouri. During her overnight stay at USP-Lewisburg, plaintiff was kept segregated in a hospital unit with other transsexual inmates, Tonett Johnson and Ralph Scott a/k/a Simone Scott.

37. Initially, plaintiff was completely segregated from other inmates at MCFP-Springfield in a segregation cell. Later, she was placed in a hospital unit where she was only allowed to interact with the inmates, whom were seriously ill and hospitalized on said unit, 3-2, never was she permitted to enter the general population.

38. The restrictions imposed upon the plaintiff as described in paragraphs 36 and 37 herein, was imposed solely because of plaintiffs' transsexualism as described in paragraphs 18, 19, 20, 21, 25 and 26 and Bureau officials belief that said facts warranted greater protection to ensure the plaintiffs' safety [sic].

39. On August 22, 1986 a psychological report was prepared by Bureau's psychologist at MCFP-Springfield documenting plaintiffs' transsexualism. The psychologist noted that the plaintiff would likely experience a number of difficulties during her incarceration, including a great deal of sexual pressure because of her youth and feminine appearance.

40. On August 19, 1986 a history and physical was prepared by Bureau's medical doctor at MCFP-Springfield stating that the plaintiff apparently began at age 16 to identify more as a female, had some type of scrotal surgical procedure in 1980 and has been on Premarin (female hormone) for the past year.

41. On or about September 1, 1986 a Transfer Request was sent to the Bureau's North Central Region contending that the plaintiff has a predisposition to transsexualism and recommended she be transferred to USP-Lewisburg.

42. Each of the facts stated in paragraphs 39, 40 and 41 were known to Defendants' EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH at the times of their alleged actions or inactions resulting in the alleged violations complained of herein, as set forth hereinafter in full and detail, respectively.

#### D.

#### TRANSFER TO USP-LEWISBURG

43. On October 17, 1986 the plaintiff was transferred from MCFP-Springfield and placed enroute to her newly designated institution, USP-Lewisburg. On the same date, she was placed in holdover status at the Federal Correctional Institution (FCI), El Reno, Oklahoma. Based on the facts as described in paragraphs 18, 19, 20, 21, 25 and 26 herein Bureau officials at FCI-El Reno segregated the plaintiff in a hospital cell.

44. Bureau officials at FCI-El Reno prepared an administrative detention order contending that the plaintiffs' presence in the general population [sic] would pose a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution because of her transsexualism.



45. On November 7, 1986 the plaintiff was removed from administrative segregation of FCI-Elreno and transported to her designated institution, USP-Lewisburg. Upon her arrival at USP-Lewisburg Bureau officials prepared an administrative detention order that states: Inmate Farmer is a transsexual who is 21 years old, designated to Lewisburg. Accordingly, due to the nature of his (SIC) case he (SIC) was placed on Addt. (administrative detention) pending review by the I.D.C. prior to placement in population.

46. During, plaintiffs entire stay at USP-Lewisburg she remained administratively segregated for the reasons aforementioned. Furthermore, while at said penitentiary plaintiff remained on a status commonly known as "Total Single or T/S" which means essentially she was never permitted to come into physical contact with any other inmate.

47. USP-Lewisburg is, and at all times mentioned herein was, a security level 5 (five) institution, housing aggressive and violent offenders. Moreover, said penitentiary has a history of assaults [sic], murders, drugs, etc. which compose a violent environment.

48. On December 18, 1986 an administrative remedy response was prepared for Defendant EDWARDS (than [sic] Warden, USP-Lewisburg) stating: It has been determined by the administration that in order to afford you all possible means of protection, you will be housed on total single status. The decision to transfer you to another facility was based upon a determination, that there is a high probability that you cannot safely function at this institution.

49. In an interview with Bureau employee, John E. Williams, (than [sic] Chief Correctional Supervisor at USP-Lewisburg) it was explained to the plaintiff that because of her feminine appearance, if she were to enter the general population inmates would put a knife to her throat and force her to do whatever they wanted, because she was the closes [sic] thing, they have or would come in contact with for a very long time, to a woman. Therefore, it was necessary to keep her separated from all other inmates.

50. A medical summary was prepared at USP-Lewisburg which claimed that the plaintiffs' last dosage of Premarin (illegally and without authorization) had been one month earlier and pertinent physical examination findings included some decrease in facial hair and rearrangement of body fact [sic] to a female distribution.

51. The decision not to permit the plaintiff to enter the population of USP-Lewisburg because of her transsexuality is set-forth in the case Farmer v. Carlson, 685 F.Supp 1335 (M.D. Pa. 1988) and is incorporated herein as though setforth in full and detail.

52. Bureau officials were aware that the plaintiff had successfully operated a credit-card fraud organization while in the custody of state and federal authorities and though serving a twenty year federal sentence and a consecutive thirty year state sentence, this had not deterred her from continuing to engage in these activities.

53. Additionally, plaintiff received two disciplinary reports at USP-Lewisburg, 1) Code 406, Unauthorized Use of the Mail, for writing the Federal Reserve Bank under the Bureaus' legal mail provisions, and 2) Code



327, Unauthorized Contact with the Public, for attempting to obtain a credit-card number via telephone. Noteworthy, plaintiff received one disciplinary report at MCFP-Springfield, Code 327, *supra.* for operating illegal credit-card business through the inmate telephone.

54. Irrespective of these facts, after spending about five months in administrative segregation on or about March 17, 1987 the plaintiff was redesignated and transferred to the Federal Correctional Institution (FCI), Petersburg, Virginia.

55. Defendants' QUINLAN, EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH is, and at all times mentioned herein were aware and knowledgeable [sic] of the facts set forth in paragraphs 43, 44, 45, 46, 47, 50, 51, 52, 53 and 54 during the time of their individual actions or inactions as set forth herein resulting in the alleged violations complained of hereinafter.

#### E.

#### TRANSFER TO FCI-PETERSBURG

56. On March 17, 1987 the plaintiff arrived at FCI-Petersburg. She was placed in administrative segregation because of her transsexuality and pending initial classification by her assigned Unit Team.

57. At all times mentioned herein FCI-Petersburg was a level four security level institution and housed a low percentage of offenders with a history of violence or aggressive behavior.

58. Though, plaintiff was permitted in the general population at FCI-Petersburg she spent the majority of

her stay at said institution in segregation for allegedly committing disciplinary infractions, as described hereinafter.

59. During the plaintiff periodic housing in the general population she was constantly subject to harassment, threats and sexual pressure. Further, on at least [sic] three occasions [sic] she was forced to engage in sexual acts with fellow inmates.

60. On numerous occasions [sic] plaintiff sought psychological assistance for the harassment and sexual pressure she was experiencing in the general population at FCI-Petersburg. However, she did not report the aforementioned sexual assaults [sic] to prison officials in fear of retaliation [sic] by said inmates.

61. While at FCI-Petersburg plaintiff received five incident reports involving indirectly or directly credit-card fraud via telephone. These disciplinary infractions included fraudulently ordering 1) hair relaxer; 2) ladies sweat clothing; 3) ladies watch; and 4) ladies eyeglasses, well as attempting to obtain a credit-card number via telephone.

62. She also received disciplinary infractions for 1) having her safety [sic] shoes off; 2) wearing her T-shirt in a female fashion (off one shoulder) which officials claimed exposed a portion of her "breast."; 3) attempting to introduce female hormones into the institution, and 4) writing a letter to another inmate without authorization, well as unauthorized reproduction of document which also concerned her transsexualism.

63. As setforth above none of the disciplinary infractions allegedly committed by the plaintiff involved violent or aggressive behavior. Furthermore, many involved issues' which directly relate to plaintiffs transsexuality.

64. Due to the aforementioned disciplinary infractions plaintiff was transferred to the federal Correctional Institution (FCI) Oxford, Wisconsin.

65. At all times mentioned herein Defendants EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH were aware and knowledgeable [sic] of the facts stated in paragraphs 56, 57, 58, 60, 61, 62, 63 and 64 during the time of their individual actions or inactions complained of herein resulting in the alleged violations as setforth hereinafter.

#### F.

#### TRANSFER TO FCI-OXFORD

66. In January, 1988 plaintiff was removed from FCI-Petersburg and placed in hold-over status at USP-Lewisburg where she was segregated in a hospital cell for the reasons stated in paragraphs 45, 46, 47, 48 and 49 herein.

67. Subsequently, she was removed from USP-Lewisburg and transported to FCI-Elreno where she was administratively segregated as a hold-over for the reasons stated in paragraph 44 herein.

68. Likewise, plaintiff was removed from FCI-Elreno and transported to USP-Terre Haute where she

was administratively segregated as a hold-over for the reasons stated in paragraphs 28 and 29 herein.

69. Plaintiff was removed from USP-Terre Haute and transported to her designated institution, FCI-Oxford.

70. At all times mentioned herein FCI-Oxford was a security level four institution, however, it housed a medium percentage of inmates with histories of violence and aggressiveness.

71. Plaintiff was permitted to enter the general population at FCI-Oxford where she received a substantial amount of sexual pressure from other inmates, and atleast [sic] on one occasion was forced to engage in a sex act with another inmate.

72. Shortly after her arrival at FCI-Oxford plaintiffs' transsexualism was further documented to and by prison officials in a psychological questionnaire [sic] and summary dated February 4, 1988.

73. On February 8, 1988 plaintiff filed an administrative remedy with Defendant BRENNAN in which she wrote: Farmer, a transsexual prior to her incarceration received psychological counseling for a sex-change at Johns' Hopkins University. Additionally, she received the medication of conjugated estrogen and had an unsuccessful operation on the blackmarket in New York City to have her testicles removed.

74. On February 18, 1988 Defendant BRENNAN acknowledged having received plaintiffs' complaint by denying the same and returning it to her.

75. On June 22, 1988 plaintiff filed another request for administrative remedy with Defendant BRENNAN concerning various issues' directly relating to her transsexuality.

76. On July 8, 1988 Defendant BRENNAN acknowledged receipt [sic] of plaintiffs complaint by denying the same and returning it to her.

77. On July 11, 1988 plaintiff appealed Defendant BRENNAN denial of her request for administrative remedy to Defendant DUBOIS who acknowledged the same by denying plaintiffs' appeal on August 12, 1988.

78. On February 12, 1988 plaintiff brought a civil action entitled *Farmer v. Edwin Meese, Michael QUINLAN E.J. BRENNAN, and Mr. Haas*, 88-C-110-S (W.D. Wis.) directly concerning her transsexuality. This action thoroughly advised Defendants QUINLAN and BRENNAN of the facts set forth in paragraph 51 herein.

79. Further, Defendants' BRENNAN and DUBOIS knowledge of plaintiff transsexuality is thoroughly documented in the case of *Farmer v. Haas*, 927 F.2d 607 (7th Cir. March 1, 1991) (Table, text available on WESTLAW).

80. On February 1, 1988 plaintiff received a disciplinary report of FCI-Oxford for attempting to introduce female hormones into the institution without authorization.

81. She also received three disciplinary reports that directly or indirectly involved credit-card fraud while confined at FCI-Oxford - 1) obtaining credit information via telephone; 2) fraudulently ordering flowers, and 3) a ladies watch.

82. Consequently, it was recommended that the plaintiff received a disciplinary transfer, pursuant thereto on February 6, 1989 Defendant KURZYDLO prepared a Request for Transfer for Defendant BRENNAN addressed to Defendant DUBOIS and SMITH recommending that the plaintiff be transferred to a maximum security penitentiary. Defendant KURZYDLO included a copy of plaintiffs' Pre-Sentence Investigation (PSI) Report which thoroughly documented her transsexuality, and a Progress Report that summarized her previous designations and transfers.

83. Defendant KURZYDLO, knew that the placement of the plaintiff in a penitentiary would not offer her any greater security or benefit her in any aspect.

84. Defendants' DUBOIS and SMITH caused or allowed the plaintiff to be redesignated to the United States Penitentiary in Terre Haute, Indiana knowing that said penitentiary has a violent environment, including a history of assaults, murders and rapes, and plaintiff, a feminine, male-to-female preoperative transsexual, life would be endangered if placed in the institutions' general population.

85. During the interim plaintiff received disciplinary reports for allegedly 1) engaging in a sex act; 2) writing another inmate, and 3) unauthorized possession [sic] of a Motrin.

86. With regard to plaintiffs' disciplinary reports in a letter dated July 14, 1988 Niel Blumberg, MD. P.A. Diplomat American Board of Psychiatry, Neurology and Forensic Psychiatry wrote to prison officials at FCI-Oxford noting plaintiffs' diagnosis of transsexualism and



stating unless Ms. Farmer receives appropriate treatment for the above noted problems, it is unlikely that her involvement in criminal activities will cease.

87. On March 9, 1989 Defendant BRENNAN signed the Order for the plaintiff to be transferred to USP-Terre Haute knowing that plaintiff safety [sic] would be endangered at said institution. Defendant BRENNAN also knew that USP-Terre Haute has a violent environment including a history of murders, assaults [sic] and rapes.

#### G.

##### TRANSFER TO USP-TERRE HAUTE

88. Plaintiff was received at the United States Penitentiary in Terre Haute, Indiana on March 9, 1989 and placed in administrative segregation, because of her transsexuality, and supposedly pending initial classification by her assigned Unit Team. On or about March 23, 1989 plaintiff was released into the general population at USP-Terre Haute and assigned to Unit 3M.

89. On April 1, 1989 an inmate entered the plaintiffs' cell and demanded that she engage in sexual intercourse with him and when she refused he attacked her, beating her in the face with his bare fist, then [sic] kicking her with his feet, revealing a home made knife he had stuck in his sneaker, finally the inmate began tearing the plaintiffs clothing and forcibly [sic] raped her.

90. As a result of the sexual assault [sic] upon plaintiff she suffered mental anguish, psychological damage, humiliation [sic], a swollen face, cuts and bruises to her

mouth and lips and a cut on her back, well as some bleeding.

91. Plaintiff was threaten with being murdered if she informed prison officials of the rape and out of fright for her life she did not inform prison officials of the sexual assault until one week later when she was placed in detention. Plaintiff remained in detention until her departure from USP-Terre Haute.

#### H.

##### ENVIRONMENT OF USP-TERRE HAUTE

92. By Bureau of Prisons, Program Statement 5100.2 entitled Security Classifications and Designations USP-Terre Haute is a level [sic] four institution. However, security levels are determined by points and generally have three spheres, (1) 4-low, (2) 4-med, and (3) 4-high. USP-Terre Haute was at the highest sphere of a level four. Inasmuch, USP-Terre Haute houses violent offenders level five inmates and maximum custody inmates.

93. Defendants QUINLAN, EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH is, and at all times relevant to the facts stated herein were aware that USP-Terre Haute is a penitentiary, with a violent environment, housing a majority of violent offenders with frequent incidents of assaults [sic], fights, weapons, drugs and sexual assaults [sic], well as a history of murders, weapons, drugs, sexual assaults [sic], etc.

94. Furthermore, Defendants QUINLAN, EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH knew that to place the plaintiff or any male-to-



female peroperative [sic] transsexual, who has a feminine appearance, presents themselves mentally and physically as female, has been administered female hormones and had began to prepare for Sex Reassignment Surgery would be sexually assaulted [sic] at USP-Terre Haute, and through their actions or omissions permitted the plaintiff to be designated and housed at USP-Terre Haute.

95. Defendants QUINLAN, EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH knew that the plaintiff has no history of violence, has never been in anytype [sic] of physical confrontation or fight with inmate or staff and is a passive individual who could not function in the hostile and violent environment of USP-Terre Haute.

96. Defendants EDWARDS, DUBOIS and SMITH knew of the sexual assaults, fights, drugs, assaults of stabbing and piping, well as excessive alcohol in the population of USP-Terre Haute, through administrative remedies, disciplinary appeals and transfer request filed with them respectively.

97. Defendant EDWARDS was the Warden at USP-Terre Haute during plaintiffs incarceration there and though he was personally aware of her transsexuality well as the high probability she could not safely [sic] function at said institution he permitted her to enter the general population.

98. In addition, to being sexually assaulted at USP-Terre Haute plaintiff received a great deal of sexual pressure which continued even after her placement in detention.

## VI

### LEGAL CLAIMS

99. Plaintiff has been and at all times mentioned herein was denied her right to Due Process of law as guaranteed by the Fifth Amendment of the Constitution of the United States, by willful and knowing failure of Defendant QUINLAN to establish an effective policy on the designations and housing of transsexual offenders committed to the Bureau of Prisons as set forth more specifically in paragraphs 32, 33, 34 and 35.

100. Plaintiff has been and at all times mentioned herein and is being denied her right to Due Process of law as guaranteed by the Fifth Amendment of the Constitution of the United States by being improperly classified, designated and housed within the Federal Bureau of Prison system.

101. Plaintiff has been and at all times mentioned herein was denied her statutory right as protected by the Due Process Clause of the Fifth Amendment to the United States Constitution and her Eighth Amendment right to be free from deliberate indifference to her safety [sic] by the Defendants failure to provide for her safety [sic], protection and safekeeping as described more specifically in paragraphs 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, and 98. See also 18 USC 4042(2), (3).

102. As a proximate result of Defendants' QUINLAN, EDWARDS, BRENNAN, KURZYDLO, DUBOIS and SMITH prejudicial abuse of discretion and failure to proceed in the manner required by law in the actions taken against plaintiff by the Federal Bureau of Prisons, and

each of the defendants, employees', agents and all other persons acting in concert and participation with them, in prejudicially abusing their discretion and failing to proceed in the manner against plaintiff by the Federal Bureau of Prisons, plaintiff was, has been, and continues to be deprived of Constitutional, civil, statutory and regulatory rights and immunities to such extent that her physical and mental health have been, and presently are being irreparably damaged beyond the ability of a pecuniary damages award alone to restore her to such sound physical and mental health. Plaintiff alleges that she has been injured by the acts of defendants and each of them to such a degree that it is impossible for her to accurately place a dollar amount to such loss, no amount of money, no matter how high the amount, being sufficient in itself to compensate her for such loss; therefore, plaintiff herein alleges compensatory damages in the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and punitive damages in the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to be assessed against defendants BRENNAN, KURZYDLO, DUBOIS and SMITH and each of them to the plaintiff.

103. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been, and, regardless of how many or which institutions she is or may be transferred to by Defendant QUINLAN or defendant QUINLAN'S employees or agents, will continue to be irreparably, injured by the conduct of the defendants and each of them, their successors in office, employees, agents and all other persons acting in concert and participation with them unless this

Court grants the Declaratory, Injunctive, and damages relief which plaintiff seeks.

## VIII

### RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment granting plaintiff.

1. A declaratory judgment that the actions and omissions of the defendants as described herein violates plaintiffs' rights as guaranteed [sic] by the United States Constitution;

2. A permanent injunction which:

a. Provides for the plaintiff to be confined in a co-correctional facility and prohibits her from being confined in any of the Federal Bureau of Prisons "penitentiaries" [sic], USP-Terre Haute, USP-Leavenworth, USP-Lewisburg, USP-Lompoc or USP-Atlanta;

3. A jury trial on all issues' triable [sic] by jury.

4. Compensatory damages in the amount of One Hundred Thousand dollars (\$100,000.00) to plaintiff from defendants BRENNAN, KURZYDLO, DUBOIS and SMITH.

5. Punitive damages in the amount of One Hundred Thousand dollars (\$100,000.00) to plaintiff from defendants BRENNAN, KURZYDLO, DUBOIS and SMITH.

6. Plaintiffs' cost of this suit.

7. For such other and further relief as this Court may deem just and proper.

DATED: December 4, 1991

Respectfully submitted

/s/ Dee Farmer  
Dee Farmer  
In Propria Persona

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 91-C-716-S

(Caption Omitted In Printing)

ANSWER OF DEFENDANTS

Defendants, by their attorneys, Kevin C. Potter, United States Attorney for the Western District of Wisconsin, by J. B. Van Hollen, Assistant United States Attorney for that District, hereby submit this answer to plaintiff's complaint in the above-entitled matter.

Defendants answer as follows:

1. As to the first sentence, admit. As to the second sentence, deny knowledge or information sufficient to form a belief. As to the third sentence, deny.

2. To the extent that any allegation in paragraph 2 is not a statement of law to which no response is required, defendants deny all allegations.

3. The allegation in paragraph 3 is a statement of law to which no response is required.

4. Defendants admit that defendants Brennan and Kurzydlo reside in the Western District of Wisconsin. To the extent that any other allegations in paragraph 4 are not statements of law to which no response is required, defendants deny all other allegations.

5. Deny. Admit that plaintiff is in the custody of the United States Bureau of Prisons for a period of twenty years and is presently incarcerated at the United States



Medical Center for Federal Prisoners, Springfield, Missouri, a facility of the Bureau of Prisons.

6. As to the first sentence, admit. As to the second sentence, deny. As to the third sentence, deny. Admit that defendant Quinlan performed his duties as required. As to the fourth sentence, deny.

7. Admit.

8. As to the first sentence, admit. As to the second sentence, deny; admit that defendant Edwards performed his duties as required. As to the third sentence, deny.

9. Admit.

10. As to the first sentence, admit. As to the second sentence, deny. Admit defendant Brennan was responsible for the custody and care of inmates confined at FCI-Oxford.

11. Admit.

12. As to the first sentence, admit. As to the second sentence, deny. Admit defendant Kurzydlo is presently a unit manager at FCI-Oxford, Wisconsin. As to the third sentence, deny.

13. Deny defendant Kurzydlo is case manager. Admit remainder of the paragraph.

14. As to the first sentence, admit. As to the second sentence, deny. Admit that defendant DuBois was responsible for exercising some supervisory responsibilities within the North Central Region of the Bureau of Prisons. As to the third sentence, deny.

15. Admit.

16. As to the first sentence, admit. As to the second sentence, admit. As to the third sentence, deny.

17. Admit.

18. Deny knowledge or information sufficient to form a belief. Admit plaintiff is a biological male.

19. Deny knowledge or information sufficient to form a belief.

20. Deny knowledge or information sufficient to form a belief.

21. Deny knowledge or information sufficient to form a belief.

22. As to the first sentence, deny knowledge or information sufficient to form a belief. As to the second sentence, deny.

23. As to the first sentence, deny knowledge or information sufficient to form a belief. As to the second sentence, admit.

24. Deny knowledge or information sufficient to form a belief.

25. As to the first sentence, deny knowledge or information sufficient [sic] to form a belief. As to the second sentence, deny knowledge or information sufficient [sic] to form a belief. Admit the Bureau of Prison's medical and psychiatric personnel diagnosed plaintiff as a transsexual.

26. As to the first sentence, deny. Admit that records compiled [sic] and maintained by the Bureau of Prisons describe plaintiff as a non-violent, passive/



aggressive individual who projects feminine characteristics. As to the second sentence, admit. As to the third sentence, admit.

27. Deny.

28. Deny knowledge or information sufficient to form a belief. Admit that transsexuals present a unique management problem in a correctional setting.

29. As to the first sentence, deny knowledge or information sufficient to form a belief. As to the second and third sentences, deny.

30. Admit, but submit that this provision has been rescinded and is no longer effective.

31. As to the first sentence, admit. As to the second sentence, deny. Admit that the Bureau of Prisons institutions were assigned security levels one through six and custody levels of in, out, max, and community. As to the third sentence, admit. As to the fourth sentence, deny. Admit that with regard to custody levels community is the lowest, followed by out, in and max is the highest. As to the fifth sentence, admit.

32. Admit.

33. Admit.

34. Deny.

35. Deny.

36. As to the first sentence, admit. As to the second sentence, deny knowledge or information sufficient to form a belief.

37. Deny knowledge or information sufficient to form a belief.

38. Deny. Admit that Bureau officials believed greater protection was warranted to ensure the plaintiff's safety.

39. Admit.

40. Deny. Admit that on August 19, 1986, a history and physical was prepared by Bureau's medical doctor at MCFP-Springfield. Said history states that examining physician was told by plaintiff that he had begun at age sixteen to identify more as a female, had some type of sex change operation in 1980 and has been on premarin (female hormone) for the past year.

41. Deny knowledge or information sufficient to form a belief.

42. Deny.

43. As to the first sentence, admit. As to the second sentence, admit. As to the third sentence, deny.

44. Deny knowledge or information sufficient to form a belief.

45. As to the first sentence, admit. As to the second and third sentences, deny knowledge or information sufficient to form a belief.

46. Deny. Admit that during plaintiff's entire stay at USP - Lewisburg he remained administratively detained. As to the second sentence, deny knowledge or information sufficient to form a belief.

47. As to the first sentence, admit. As to the second sentence, deny as vague and ambiguous.

48. Deny knowledge or information sufficient to form a belief.

49. Deny knowledge or information sufficient to form a belief.

50. Deny as vague and ambiguous.

51. Admit.

52. Deny knowledge or information sufficient to form a belief. Admit that some Bureau officials were aware that the plaintiff had successfully operated a credit card fraud organization while in custody.

53. Admit.

54. Deny. Admit that plaintiff was redesignated and transferred to the Federal Correctional Institution, Petersburg, Virginia.

55. Deny.

56. Deny. Admit that on March 17, 1987, the plaintiff arrived at FCI-Petersburg where he was placed in administrative detention pending initial classification by his assigned unit team.

57. Deny as being vague and ambiguous. Admit that FCI-Petersburg was a level four security level institution.

58. Deny. Admit that plaintiff was permitted in the general population at FCI-Petersburg and spent the majority of his stay at said institution in detention for committing disciplinary infractions.

59. Deny knowledge or information sufficient to form a belief.

60. Deny knowledge or information sufficient to form a belief. Admit the plaintiff sought psychological assistance while in confinement and did not report any sexual assaults to prison authorities.

61. Deny. Admit that while at FCI-Petersburg plaintiff received eleven incident reports involving indirectly or directly credit card fraud by a telephone. These disciplinary infractions included fraudulently ordering hair relaxer, ladies' sweat clothing, a lady's watch, ladies' eye glasses, as well as attempting to obtain a credit card number via telephone.

62. Admit.

63. As to the first sentence, deny. Admit that none of the disciplinary infractions involved violent behavior. As to the second sentence, deny knowledge or information sufficient to form a belief.

64. Admit.

65. Deny.

66. Deny knowledge or information sufficient to form a belief. Admit in January 1988 plaintiff was removed from FCI-Petersburg and placed in hold-over status at USP-Lewisburg.

67. Deny knowledge or information sufficient to form a belief. Admit that plaintiff was removed from USP-Lewisburg and transported to FCI-El Reno where he was administratively detained.

68. Deny knowledge or information sufficient to form a belief. Admit that plaintiff was removed from FCI-El Reno and transported to USP-Terre Haute where he was administratively detained.

69. Admit.

70. Deny as vague and ambiguous. Admit that FCI-Oxford was a security level four institution.

71. Deny knowledge or information sufficient to form a belief. Admit plaintiff was permitted to enter the general population at FCI-Oxford.

72. Admit.

73. Admit.

74. Deny. Admit that on February 18, 1988, defendant Brennan acknowledged having received plaintiff's complaint and denied the requested relief.

75. Admit.

76. Deny. Admit that on July 8, 1988, defendant Brennan acknowledged receipt of plaintiff's complaint and denied the requested relief.

77. Deny. Admit that on July 11, 1988, plaintiff appealed defendant Brennan's denial of his request for administrative remedy to defendant DuBois who denied the requested relief on August 12, 1988.

78. Admit.

79. Admit.

80. Admit.

81. Admit.

82. Deny. Admit that it was recommended that plaintiff receive a disciplinary transfer, pursuant thereto on February 6, 1989, defendant Kurzydlo prepared a request for transfer for defendant Brennan addressed to defendants DuBois and Smith recommending that plaintiff be transferred to USP-Leavenworth, Kansas. As to the second sentence, admit.

83. Deny.

84. Deny. Admit that defendants DuBois and Smith caused or allowed the plaintiff to be redesignated to the United States Penitentiary in Terre Haute, Indiana.

85. Deny as being vague and ambiguous. Admit that plaintiff received disciplinary reports for allegedly engaging in a sex act, writing another inmate, and unauthorized possession of motrin while at FCI-Oxford.

86. Deny. Admit that with regard to plaintiff's disciplinary reports in a letter dated February 14, 1988, Neil M. Blumberg, M.D.P.A., Diplomat, American Board of Psychiatry, Neurology and Forensic Psychiatry, wrote to case manager Mark Ciske, at FCI-Oxford, noting plaintiff's diagnosis of transsexualism and stating unless plaintiff received appropriate treatment for the above-noted problems, it was unlikely that his involvement in criminal activities would cease.

87. Deny. Admit that on March 9, 1989, defendant Brennan signed the order for the plaintiff to be transferred to USP-Terre Haute.

88. Deny. Admit plaintiff was received at the United States Penitentiary in Terre Haute, Indiana, on March 9,



1989, and placed in administrative detention because of a prior determination that plaintiff was HIV positive and posed a risk to himself or others. As to the second sentence, admit.

89. Deny knowledge or information sufficient to form a belief.

90. Deny knowledge or information sufficient to form a belief.

91. As to the first sentence, deny knowledge or information sufficient to form a belief. As to the second sentence, deny.

92. As to the first sentence, admit. As to the second sentence, deny. As to the third sentence, deny. As to the fourth sentence, deny knowledge or information sufficient to form a belief. Admit that USP-Terre Haute houses some violent offenders.

93. Deny.

94. Deny. Admit that defendants permitted the plaintiff to be designated and housed at USP-Terre Haute.

95. Deny.

96. Deny.

97. Deny. Admit that defendant Edwards was a warden at USP-Terre Haute during plaintiff's incarceration there.

98. Deny knowledge or information sufficient to form a belief.

99. Deny.

100. Deny.

101. Deny.

102. Deny.

103. Deny.

Any allegations not otherwise admitted or denied or hereby denied.

#### AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.

2. The court lacks jurisdiction over the persons of the defendants.

3. Improper service of process by plaintiff.

4. Defendants are not liable under the Doctrine of Qualified Immunity.

5. Defendants' conduct did not result in a constitutional deprivation for plaintiff.

6. Defendants' conduct was not causally related to plaintiff's damages, if any.

Wherefore, having fully answered, asserting their defenses, defendants respectfully request the plaintiff's action be dismissed with prejudice and with costs and that the court grant such other relief as may be appropriate and just.

Dated this 24th day of January, 1992.

Respectfully submitted,

KEVIN C. POTTER  
United States Attorney

By: /s/ J. B. Van Hollen  
J. B. VAN HOLLEN  
Assistant U. S. Attorney

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 91-C-716-S

(Caption Omitted In Printing)

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DEFENDANTS, MOTION FOR SUMMARY JUDGMENT

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Defendants, by their attorneys, Kevin C. Potter, United States Attorney for the Western District of Wisconsin, by Mark A. Cameli, Assistant United States Attorney for that district, hereby move the court to grant summary judgment in their favor pursuant to Rule 56, Federal Rules of Civil Procedure, as there is no genuine issue of material fact and because defendants are entitled to judgment as a matter of law. In support of this motion, defendants have attached proposed findings of fact and conclusion of law, with supporting declarations and a memorandum of law. These documents are incorporated into this motion by reference.

The plaintiff has been notified of the contents and meaning of Rule 56(e), Federal Rules of Civil Procedure, through a letter from counsel for the defendants. A copy of this letter is attached to this motion and incorporated by reference.

Wherefore, the defendants pray that the Court grant summary judgment in their favor, dismissing this action with prejudice and with costs, and for all other necessary and proper relief.

Dated this 18th day of February, 1992.

Respectfully submitted,

KEVIN C. POTTER  
United States Attorney

By: /s/ Mark A. Cameli  
MARK A. CAMELI  
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN  
Case No. 91-C-716-S  
(Caption Omitted In Printing)

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DEFENDANTS' PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

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Defendants, by their attorneys, Kevin C. Potter, United States Attorney for the Western District of Wisconsin, by Mark A. Cameli, Assistant United States Attorney for that district, hereby submit the following proposed findings of fact and conclusions of law in support of their motion for summary judgment.

I. FINDINGS OF FACT

There is no genuine issue as to material facts set forth below:

1. This is a civil action in which the plaintiff had been granted leave to proceed in *forma pauperis* on his claim that defendants were deliberately indifferent to his safety in violation of his Eighth Amendment rights. (Docket No. 1.)

2. Edward J. Brennan is employed as the Warden of the Federal Correction Institution (FCI) Oxford, Wisconsin, and has been employed in that capacity since July 19, 1987. (Brennan Declaration at Par. 1.)

3. Warden Brennan has had no direct personal involvement in any of the matters alleged in plaintiff's complaint, except for signing the transfer order dated



March 7, 1989. This order authorized the transfer of plaintiff from FCI-Oxford to the United States Penitentiary Terre Haute, Indiana, for disciplinary purposes. (Brennan Declaration at Par. 5.)

4. Warden Brennan has no personal knowledge concerning the alleged assault occurring at Terre Haute on or about April 1, 1989, nor did he have any knowledge of any assaultive behavior, or threats, which may have been directed at plaintiff while he was incarcerated at USP-Terre Haute, Indiana. (Brennan Declaration at Par. 6.)

5. Dennis M. Kurzydlo is presently employed as a unit manager at FCI-Oxford and has been employed in that capacity since August 27, 1989. (Kurzydlo Declaration at Par. 1.)

6. Plaintiff was confined at FCI-Oxford from January 27, 1988, until March 9, 1989. He is presently confined at the United States Medical Center, Springfield, Missouri. (Kurzydlo Declaration at Par. 3.)

7. On January 25, 1989, plaintiff was found guilty by a disciplinary hearing officer of Attempting to Give Anything of Value to Another. That incident represented plaintiff's fourth incident report since his arrival at FCI-Oxford during late January, 1988. (Kurzydlo Declaration at Par. 5.)

8. Imposed sanctions against plaintiff included, *inter alia*, a recommendation for a disciplinary transfer. (Kurzydlo Declaration at Par. 5.)

9. On January 31, 1989, as part of the transfer recommendation process, Mr. Kurzydlo prepared a progress

report on plaintiff. (Kurzydlo Declaration at Par. 6 and Attachment 2.)

10. On February 6, 1989, Mr. Kurzydlo prepared a request for transfer memorandum based on plaintiff's involvement in several rule infractions. Officer Kurzydlo concluded that plaintiff required the security and supervision offered at a penitentiary. (Kurzydlo Declaration at Par. 7 and Exhibit 3.)

11. From September 17, 1987, to April 4, 1990, plaintiff was classified as a security classification level 5 inmate under the Bureau of Prisons policy. At FCI-Oxford, he was being housed in a security level 4 institution. (Kurzydlo Declaration at Par. 8 and Attachment 4.)

12. At the time of plaintiff's transfer, USP-Terre Haute was a security level 4 institution by policy. Plaintiff could have been transferred to any security level 5 institution including, Lewisburg, Leavenworth, and Lompoc. Instead, he was transferred to Terre Haute for the purpose of placing him in a different environment consistent with his individual security needs. (Kurzydlo Declaration at Par. 9 and Attachment 5.) (Smith Declaration at Par. 4.)

13. Officer Kurzydlo believes that the correctional staff at USP-Terre Haute are well equipped to handle the problems and the needs presented by plaintiff and he relied upon this belief in his evaluation and recommendation to transfer plaintiff to USP-Terre Haute. (Kurzydlo Declaration at Par. 10.)

14. Officer Kurzydlo has no personal knowledge concerning the alleged assault which occurred against plaintiff on April 1, 1989, nor did he have any knowledge

of any assaultive behavior and threats against plaintiff at Terre Haute, Indiana. (Kurzydlo Declaration at Par. 11.)

15. Larry E. DuBois was the Regional Director, North Central Region, of the Federal Bureau of Prisons, at the time of plaintiff's transfer in March of 1989. (DuBois Declaration at Par. 1.)

16. In his capacity as Regional Director, Mr. DuBois exercised supervisory responsibility over subordinate staff to conduct investigations and process transfers for inmates. (DuBois Declaration at Par. 1.)

17. Mr. DuBois has no direct personal knowledge concerning plaintiff's transfer and recalls no personal involvement in the decision to transfer plaintiff from FCI-Oxford to USP-Terre Haute in March of 1989. (DuBois Declaration at Par. 3.)

18. Mr. DuBois is not a resident, property owner, nor business operator in Wisconsin, and he has no other connection with or within the State of Wisconsin. (DuBois Declaration at Par. 4.)

19. Mr. N. W. Smith was employed as the Correctional Services Administrator, North Central Region, Federal Bureau of Prisons, in March of 1989 at the time of plaintiff's transfer. (Smith Declaration at Par. 1.)

20. Mr. Smith has no direct personal knowledge concerning plaintiff's transfer. He relied upon information provided by the institution which indicated that plaintiff posed a significant risk to other inmates by his behavior. He was transferred as a result of disciplinary problems. (Smith Declaration at Par. 3.)

21. Among his many disciplinary problems, plaintiff had been found guilty by a disciplinary hearing officer of engaging in anal sex with an inmate on the recreation yard of the Special Housing Unit, FCI-Oxford, on January 23, 1989. Plaintiff knew of his status as HIV Positive since at least March 11, 1988, and had been counseled on several occasions regarding the grave danger such activity presented to other inmates. (Smith Declaration at Par. 3.) (*See also Farmer v. James R. Cowan*, Case No. 89-C-819-S.)

22. Plaintiff was transferred to Terre Haute for the purpose of placing him in a different environment consistent with his individual security needs. The correctional staff at USP-Terre Haute were well equipped in Mr. Smith's opinion to handle the problems and needs presented by plaintiff and he relied upon that belief in his evaluation and decision to transfer plaintiff. (Smith Declaration at Par. 4.)

23. Mr. Smith is not a resident, property owner, nor business operator in Wisconsin, nor does he have any connection with, or within, the State of Wisconsin. (Smith Declaration at Par. 5.)

24. J. Michael Quinlan is presently employed by the Federal Bureau of Prisons as its Director, and has been employed in that capacity since July of 1987. (Quinlan Declaration at Par. 1.)

25. Mr. Quinlan is neither a resident, nor property owner in the State of Wisconsin. (Quinlan Declaration at Par. 2.)

26. Decisions regarding the specific housing assignment of an inmate within the Federal Bureau of Prisons is delegated to the staff of each respective federal facility. Mr. Quinlan's personal approval as Director of the Federal Prison System is neither sought, nor required, in the overwhelming majority of inter-institutional inmate transfers which occur on a daily basis. (Quinlan Declaration at Par. 4.)

27. Mr. Quinlan was not involved in, nor did he have personal knowledge of, the transfer of plaintiff to the general population at the United States Penitentiary at Terre Haute, Indiana, on March 23, 1989. (Quinlan Declaration at Par. 5.)

28. Calvin R. Edwards was employed as Warden of USP-Terre Haute, Indiana, from December, 1987, until May, 1989. (Edwards Declaration at Par. 1.)

29. Mr. Edwards is neither a resident, property owner, nor business operator in the State of Wisconsin, nor does he have any connection with, or within, Wisconsin. (Edwards Declaration at Par. 3.)

30. At the time of plaintiff's transfer from FCI-Oxford to USP-Terre Haute on March 9, 1989, Mr. Edwards was employed as Warden at USP-Terre Haute. In this capacity he had no involvement whatsoever in the events alleged to have occurred at FCI-Oxford which prompted a request to transfer plaintiff to a greater level of supervision. Likewise, he was not involved in the decision to transfer plaintiff to USP-Terre Haute. (Edwards Declaration at Par. 4.)

31. Mr. Edwards did not serve on plaintiff's unit team or make initial classification decisions concerning inmate Farmer or any other inmate. Such decisions are delegated to subordinate staff to make trained, professional evaluations on housing and security assignments. (Edwards Declaration at Par. 5.)

32. Plaintiff never personally, or through correspondence, advised Mr. Edwards that he had any concerns for his safety in his housing assignment. Mr. Edwards was available to be approached by any inmate with such concerns. Likewise, plaintiff could have filed an administrative remedy request if he felt his housing assignment put him at risk. (Edwards Declaration at Par. 6.)

33. Mr. Edwards had no reason to believe that plaintiff could not function safely within the general population at USP-Terre Haute and he believes that the unit team acted appropriately in its determination of placement. (Edwards Declaration at Par. 7.)

34. On April 7, 1989, plaintiff was placed in administrative detention pursuant to a directive from the North Central Regional Office that plaintiff had been determined to be a high risk HIV positive case who required lock-down status pending hearing.

## II. CONCLUSIONS OF LAW

1. The defendants are entitled to judgment as a matter of law.

2. The Court is without personal jurisdiction over defendants DuBois, Smith, Quinlan, and Edwards, as these defendants have insufficient contacts with the Western District of Wisconsin.



3. No defendant was personally responsible for, or involved in, the acts which form the basis of plaintiff's complaint.

4. No defendant was deliberately indifferent to a risk to plaintiff's safety while he was confined at USP-Terre Haute, Indiana.

5. All of the defendants' conduct was objectively reasonable based on the status of the law governing Eighth Amendment violations and accordingly, they are all entitled to qualified immunity.

6. The defendants are not liable to plaintiff.

7. Judgment is entered in favor of defendants, dismissing the plaintiff's complaint with prejudice and with costs.

Dated this 18th day of February, 1992.

Very truly yours,

KEVIN C. POTTER  
United States Attorney

By: /s/ Mark A. Cameli  
MARK A. CAMELI  
United States Attorney

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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

Civil Action No. 91-C-716-S

(Caption Omitted In Printing)

**DECLARATION OF CALVIN R. EDWARDS**

I, Calvin R. Edwards, hereby declare and state as follows:

1. From December, 1987 until May, 1989, I was employed as Warden, USP-Terre Haute, Indiana. From May, 1989 until October, 1990, I was employed as the Regional Director, Western Region, Federal Bureau of Prisons. From October, 1990 until present I have been employed as the Regional Director, North Central Region, Federal Bureau of Prisons.

2. I have not been personally served with a summons and complaint in this case. I have ~~been~~ informed that on December 30, 1991, staff at the North Central Regional Office received a summons and complaint by way of U.S. Mail, certified, return receipt requested. I have reviewed the complaint as forwarded to me but have not acknowledged receipt of the complaint or summons, nor have I received service of the complaint and summons in any other manner.

3. I am not a resident, nor do I own property, operate a business, or have any other connection with or within the State of Wisconsin.

4. At the time of Plaintiff's transfer from FCI-Oxford to USP-Terre Haute on March, 9 1989, I was employed as the Warden at USP-Terre Haute. In such capacity I had no involvement whatsoever in the events alleged to have occurred at FCI-Oxford which prompted the request to

the North Central Regional Office to transfer the inmate to a greater level of supervision, nor was I involved in the decision by the Regional Office to transfer this inmate to USP-Terre Haute.

5. All inmates, including those claiming to be transsexual inmates, are individually evaluated by the inmate's institution unit team for placement in the most appropriate correctional setting to handle the specific situation presented. See 28 CFR 524.10 et seq. As Warden, I did not serve on the Unit Team or make initial classification decisions concerning inmate Farmer or any other inmate. I relied upon my subordinate staff to professionally evaluate inmate Farmer's particular needs and situation and determine the most appropriate specific placement upon his designation to USP-Terre Haute. His assigned unit team was trained to make those professional evaluations and to make housing and security assignments.

6. At no time did inmate Farmer, either personally or through correspondence, advise me that he had any concerns whatsoever for his safety in his housing assignment. It was my practice to stand mainline in the dining hall and I was available to be approached personally by an inmate with such concerns. Further, this inmate could have filed an administrative remedy request if he felt his housing assignment put him at risk.

7. I had no reason to believe that inmate Farmer could not function safely within the general population at USP-Terre Haute, and I believe the unit team acted appropriately in its determination of placement.

8. On April 7, 1989, inmate Farmer was placed in administrative detention pursuant to directive from the

North Central Regional Office that inmate Farmer had been determined to be a high risk HIV-positive case who required lock-down status pending hearing. The request for controlled housing placement was made by staff at FCI-Oxford.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed on February 18, 1992.

/s/ Calvin R. Edwards  
Calvin R. Edwards  
Regional Director  
North Central Region  
Federal Bureau of Prisons

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No.: 91-C-716-S

(Caption Omitted In Printing)

DECLARATION OF J. MICHAEL QUINLAN

I, J. MICHAEL QUINLAN, do hereby declare and state as follows:

(1) I am currently employed by the Federal Bureau of Prisons of the United States Department of Justice, as its Director. I have held this position since July, 1987. My business office is located in Washington, D.C.

(2) I do not reside in the state of Wisconsin. I do not own any personal or real property located in the state of Wisconsin.

(3) As to service of process in the above-styled civil action, Plaintiff's First Amended Complaint for Damages and Injunctive Relief was received at my office in Washington, D.C., by certified mail, on January 21, 1992.

(4) Decisions regarding the specific housing assignment of an inmate within the federal prison system are delegated to the staff of each respective federal facility. My personal approval as Director of the federal prison system is neither sought nor required in the overwhelming majority of inter-institutional inmate transfers which occur on a daily basis.

(5) Specifically, I was not involved in, nor did I have personal knowledge of, the transfer of Plaintiff in this case, federal inmate Douglas Farmer, reg. no. 23288-037,

to the general population at the United States Penitentiary in Terre Haute, Indiana, on March 23, 1989.

Pursuant to Title 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 18 day of FEBRUARY, 1992.

/s/ J. Michael Quinlan  
J. MICHAEL QUINLAN  
Director  
Federal Bureau of Prisons

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IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN

Civil Action No.  
91-C-716-S

(Caption Omitted In Printing)

AFFIDAVIT

COMES NOW, Steve R. Thomas, pursuant to the provisions of Title 28, United States Code, Section 1746, and declares under penalty of perjury under the laws of the United States of America that the statements made herein are true and correct.

1. I am currently employed at the United States Medical Center for Federal Prisoners (hereinafter USMCFP) as the Paralegal Specialist. This affidavit is submitted in response to the court order dated February 20, 1992, wherein Mr. Farmer alleges that he has not been allowed to review documents which were listed by the defendants in a discovery response.

2. On February 11, 1992, the following documents were reviewed by Mr. Farmer at the USMCFP:

- July 31, 1990 - Memo from Warden Turner to L. E. DuBois, Regional Director, NCRO
- July 17, 1990 - Memo from C. Kenneth Bowles to R. F. Harris
- July 17, 1990 - Psychiatric Consultation-USMCFP, Springfield, Missouri
- July 10, 1990 - Medical Transfer Summary, USMCFP, Springfield, Missouri

- June 27, 1990 - Medical Service History and Physical USMCFP, Springfield, Missouri
- April 2, 1990 - 90 - Day Review of Controlled Housing Status
- June 23, 1989 - Memo from Dr. C. Williams to W. D. Gerth, DHO
- May 8, 1989 - Memo from D. M. Hicks, HSA to Larry Morrison
- May 1, 1989 - Memo from Dr. C. Williams to Lieutenant Hanley
- Feb. 8, 1989 - Memo from Dennis Schimmel, Ph.D., to E. J. Brennan, Warden
- July 14, 1988 - Letter form Neil Blumberg, M.D., to Mark
- Sept. 5, 1986 - Transfer Summary, USMCFP, Springfield, Missouri
- Aug. 22, 1986 - Psychological Report USMCFP, Springfield, Missouri
- \* Aug. 6, 1986 - University of Maryland Hospital Consultation Report

3. In addition to the above-mentioned information, Mr. Farmer was shown where the above-referenced documents were located in his central and medical file.

Executed this 26th day of February, 1992.

[s] Steve R. Thomas  
 Steve R. Thomas  
 Paralegal Specialist  
 U. S. Medical Center for  
 Federal Prisoners  
 Springfield, Missouri

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF WISCONSIN

Civil Action  
 No. 91-C-716-S

(Caption Omitted In Printing)

DECLARATION OF DARION J. WILLIS

I, Darion J. Willis, hereby declare and state as follows:

1. I am an inmate currently committed to the custody of the Attorney General. During 1989-90, I was incarcerated at the United States Penitentiary in Terre Haute, Indiana.

2. I met Dee Farmer while in administrative detention during March 1989 at USP-Terre Haute. Shortly after my release back into the general population, Ms. Farmer was also released into the general population. I was assigned unit 3K and she 3M; however, we communicated in the general population daily.

3. I am aware that Ms. Farmer is a transsexual and through my personal knowledge and observation of her at USP-Terre Haute, she presents herself mentally and physically as feminine.

4. On April 1, 1989, during the early morning, I learned from other inmates (I do not recall their names) that Ms. Farmer was sexually assaulted ~~the~~ the previous night. In concern of her well-being, I went over to 3M to see Ms. Farmer, at which time I noticed she had a swollen face and busted lips, well as cuts in the mouth.

5. Upon talking to Ms. Farmer several minutes later, I learned that an inmate had come into her cell the

previous night and sexually assaulted her. She did not know the name of the inmate, and I was unable to ascertain the name of the inmate.

6. I gave Ms. Farmer some hydrogen peroxide for the cuts in her mouth, advised her to put ice packs on her face, and requested several friends to look out for her.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, pursuant to 28 U.S.C. § 1746.

\_\_\_\_\_  
Date

/s/ \_\_\_\_\_  
Darion J. Willis

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

CIVIL ACTION NO. 91-C-716-S

(Caption Omitted In Printing)

**RULE 56(f) MOTION IN RESPONSE  
TO DEFENDANTS' UNTIMELY MOTION  
FOR SUMMARY JUDGMENT**

Comes now Dee Farmer, Plaintiff, without the benefit of counsel and moves this court, pursuant to Rule 56(f), Federal Rules of Civil Procedure and in support thereof submit:

1. Defendants' have filed a motion for summary judgment seeking judgment on the grounds of lack of personal jurisdiction, personal involvement and qualified immunity. Defendants' motion is untimely pursuant to this Courts' scheduling order entered in this case.

2. Though some of the issues' raised by the defendants' are legal in nature and previously considered by the Court, plaintiff cannot file a response to the substance of defendants' motion, because the materials necessary for the plaintiffs' response is in the possession of the defendants.

3. Though, plaintiff has submitted a second request for production of documents directed to defendant (illegible) a response to that request is not due until forty-five days after he was served with Plaintiffs' First Amended Complaint. Defendants' response to plaintiffs' second request for production of documents is due on or about March 14, 1992.



4. These documents are necessary to the plaintiffs' response of the defendants' motion for summary judgment. *See*, Declaration of Dee Farmer, attached hereto.

5. After plaintiff receive these documents she will need sufficient time to review and have the documents copied by prison officials for admission to the Court, with the appropriate opposition pleadings. Plaintiff does not anticipate that this can be completed until almost 10 days after she receive the response to her second request for documents.

Illegible PLAINTIFF PRAY'S THIS HONORABLE COURT TO:

(a) deny the defendants' motion for summary judgment, or

(b) grant plaintiff until March 24, 1992 after she receive defendants' response to her second request for production of documents, which to file the opposition to defendants' motion for summary judgment;

(c) Any further and different relief this Court deems just and proper.

Respectfully submitted,

/s/ Dee Farmer

Dee Farmer

Register Number 23200-037

United States Medical Center

Post Office Box 4000

Springfield, Missouri 65200

(Certificate Of Service Omitted In Printing)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN  
CIVIL ACTION NO. 91-C-716-S  
(Caption Omitted In Printing)

I, Dee Farmer, hereby declare and state:

1. I am the plaintiff in the above captioned-case, in which I claim that the named defendants' were deliberate indifferent to my safety by designating me to a violent institution knowing that because of my transsexual condition I would be in grave danger of sexual assault and indeed, after only being in the general population of said institution for one week I was raped.

2. I have received a copy of the defendants' motion for summary judgment, which they assert claims of lack of personal involvement, qualified immunity and lack of personal jurisdiction. Defendants' motion is untimely according to the Court scheduling order.

3. Currently, I am awaiting a response from the defendants' to my second request for production of documents, which is due on or about March 14, 1992. The documents responsive to my (Illegible) request are necessary for the preparation of my response to the defendants' motion for summary judgment particularly, with regard to the personal involvement of each defendant and especially defendant Quinlan. The defendants are expected to show that each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc. The evidence is further expected to show that each defendant showed reckless disregard for my safety by designating

me to said institution knowing that I would be sexually assaulted. Moreover, the documents will demonstrate though the defendants' were aware of the danger of placing preoperate transsexual in violent environment of a penal institution they failed to promulgate any policy or directive for the effective designation of transsexual inmates.

4. Until I receive these documents I can not properly and effectively file a response to the defendants' motion for summary judgment.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

3-3-92  
Date

/s/ Dee Farmer  
Dee Farmer

# IN PRO PER

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

Civil Action No. 91-C-716-S

(Caption Omitted In Printing)

I, DEE FARMER, do hereby declare and state:

1. I am a federal inmate and have been confined in Bureau of Prisons institutions since August, 1986. I was convicted in the United States District Court of Maryland for violations of 18 U.S.C. § 1029 (Credit-card fraud) and sentence to a twenty (20) year term of imprisonment. I am currently confined at the United States Medical Center for Federal Prisoners' in Springfield, Missouri.

### EXHIBIT 1 - (Judgment and Commitment).

2. Prior to my commitment to the Federal Bureau of Prisons, I was diagnosed as a transsexual. My transsexualism was communicated to the Bureau of Prisons through my Pre-Sentence Report and the Psychiatric Report of Dr. Niel Blumberg. EXHIBIT 2 & 3 (Presentence Report and Dr. Niel Blumberg Psychiatric Report).

3. I was transported by the U. S. Marshal's in Baltimore, MD to the United States Penitentiary, Lewisburg, Pennsylvania ("USP-Lewisburg") where I was housed overnight in a hospital segregation cell, because of my transsexuality. Also, Tonett Johnson and Simone Scott - both transsexuals - were housed in the hospital segregation unit. The following day I was transported by Bureau of Prisons airlift to the United States Medical Center for

Federal Prisoners' in Springfield, Missouri ("USMCFP-Springfield").

EXHIBIT 4 – (Inmate Movement).

4. On August 15, 1986 I arrived at USMCFP-Springfield and was placed in administrative segregation because of my transsexualism. Subsequently, I was permitted to interact with terminally ill patients on Ward 3-2, where I was housed. While at USMCFP-Springfield, I was seen by several doctors who prepared reports documenting my transsexuality. Specifically, a psychological report was prepared that stated I would be subject to a great deal of sexual pressure during my incarceration because of my youth and feminine appearance.

EXHIBIT 5 – (Medical and Psychological Report).

5. On or about September 1, 1986, a Transfer Request was sent to the Bureau of Prisons, North Central Regional Office, documenting my transsexualism and recommending I be transferred to USP-Lewisburg. On October 17, 1986, I was transferred from USMCFP-Springfield and placed enroute to USP-Lewisburg with temporary holdover at the Federal Correctional Institution in El Reno, Oklahoma ("FCI-Elreno"), where I was administratively segregated because of my transsexualism. EXHIBIT 6 & 7 (USMCFP-Springfield Transfer Order and Transfer Request).

6. On November 7, 1986 I arrived at USP-Lewisburg and was again administratively segregated. I was given a

detention order that confers: Inmate Farmer is a transsexual who is 21 years old, designated to USP-Lewisburg. Accordingly, she is being placed in detention. During my entire stay at USP-Lewisburg I remained segregated. The reasons for my segregation was further documented in an administrative remedy response prepared for Defendant EDWARDS (then, Warden at USP-Lewisburg), stating that there was a high probability that I could not safely function at USP-Lewisburg. It was explained to me by Captain Williams, that if they were to permit me to enter the general population at USP-Lewisburg I would be raped at knife point or possibly murdered because I would be the closest thing the inmates could get to a woman. In the case of *Farmer v. Carlson*, 685 F.Supp. 1335 (M.D. Pa. 1988), initiated by me, which Defendant EDWARDS was a defendant and served with a copy of the complaint, the court upheld the Bureau of Prisons decision to transfer me from USP-Lewisburg, because there was a high probability of danger to my life.

EXHIBITS 8, 9, 10 ("USP-Lewisburg, Detention Order, Administrative Remedy, *Farmer v. Carlson*).

7. Also, while I was at USP-Lewisburg, a medical summary was prepared which claimed that my last dosage of Premarin (illegal and without authorization) had been one month earlier and pertinent physical examination findings included some decrease in facial hair and rearrangement of body fat to a female distribution. A summary was also prepared regarding the continuation of my previous medication Premarin – a conjugated estrogen.



EXHIBIT 11 – (Medical Summary, also see *Farmer v. Carlson*, supra at \_\_\_\_).

8. On March 17, 1987 I was transferred from USP-Lewisburg to the Federal Correctional Institution in Petersburg, Virginia ("FCI-Petersburg). I was administratively segregated upon my arrival at FCI-Petersburg, for a very short time, because of my transsexualism. Later I was released into the general population where I was constantly approached by inmates for sex. I was even threatened and on three occasions I was forced by physical abuse and intimidation to engage in sexual intercourse with inmates.

9. I often sought psychological counseling and medical assistance for help with problems related to my transsexualism.

10. In January, 1988, I was transferred from FCI-Petersburg to the Federal Correctional Institution in Oxford, Wisconsin ("FCI-Oxford"), with holdover housing at USP-Lewisburg, FCI-Elreno and the United States Penitentiary, Terre Haute, Indiana ("USP-Terre Haute"). At each of these hold-over institutions I was administratively segregated solely because of my transsexualism.

11. I arrived at FCI-Oxford in January, 1988, and was released shortly thereafter into the general population. On February 4, 1988, my transsexualism was documented in a psychological questionnaire and summary. On February 8 and June 22, 1988, I filed administrative remedies with Defendant BRENNAN that outlined my transsexuality. For example, one remedy stated: Farmer, a transsexual prior to her incarceration received psychological counseling for a sex-change operation at Johns'

Hopkins University. Additionally, she received the medication of conjugated estrogen and had an unsuccessful operation on the blackmarket in New York City to have her testicles removed.

EXHIBITS 12, 13, and 14 – (Psychological Summary and Administrative Remedies).

12. On July 11, 1988, I filed an administrative remedy with Defendant DUBOIS that concerned by transsexualism.

EXHIBIT 15 – (Regional Administrative Remedy Appeal).

13. On February 12, 1988, I brought the case of *Farmer v. Edwin Meese, Michael Quinlan, E. J. Brennan, and Mr. Haas*, 88-C-110-S (W.D.Wi 1988) directly regarding my transsexualism. Both Defendant QUINLAN and BRENNAN received service of process in this case and relied on the case of *Farmer v. Carlson*, supra, in their response. Thus, they are aware of my transsexuality and danger to my safety because of my transsexualism.

EXHIBIT 16 – (*Farmer v. Meese, et al.*, 88-C-110-S).

14. While in the general population at FCI-Oxford, I presented myself as a female and was often observed by Defendants' BRENNAN and KURZYDLO. Further, because of my feminine appearance I received a lot of sexual pressure from fellow inmates and on at least one occasion was forced to engage in a sex act with another inmate.

15. Also, while at FCI-Oxford, I brought the case of *Farmer v. Quinlan*, 88-0879J6P (District of Columbia) (claiming discrimination because of my transsexualism). Defendant QUINLAN received a copy of the complaint in this case, which gave him knowledge of my transsexualism.

16. I was transferred from FCI-Petersburg to FCI-Oxford for disciplinary reasons. Particularly, while at FCI-Petersburg, I received disciplinary reports for alleged infractions such as fraudulently ordering ladies sweat clothing, hair relaxer and watch; wearing my T-shirt in a female fashion (off one shoulder) which prison officials claimed exposed a portion of my breast, and attempting to introduce female hormones in the institution. I also received on disciplinary report at USMCFP-Springfield and USP-Lewisburg for alleged credit-card misuse. At FCI-Oxford I received similar incident reports for allegedly attempting to introduce female hormones into the institution and fraudulently ordering a ladies watch and flowers for other inmates. Throughout my incarceration I have had to smuggle female hormones into the institution.

EXHIBIT 17 – (Incident reports from FCI-Petersburg, USMCFP-Springfield, USP-Lewisburg and FCI-Oxford).

17. As a result of the incident report of allegedly fraudulently ordering flowers for other inmates, it was recommended that I be given a disciplinary transfer. Pursuant thereto on February 6, 1989, Defendant KURZYDLO prepared a Request for Transfer for Defendant BRENNAN, addressed to Defendant DUBOIS and

SMITH, recommending that I be transferred to a maximum security penitentiary. Defendant KURZYDLO included a copy o f [sic] my Pre-Sentence Investigation Report, which thoroughly documents my transsexualism. He also included a Progress Report that outlined my previous transfers.

EXHIBIT 18 and 19 – (Request for Transfer and Progress Report)

18. Though Defendant KURZYDLO recommended that I be transferred to the United States Penitentiary in Leavenworth, Kansas, Defendants DUBOIS and SMITH, directly or indirectly, redesignated me to USP-Terre Haute, and on March 9, 1989 Defendant BRENNAN signed a Transfer Order for me to be transferred to USP-Terre Haute.

EXHIBIT 20 – (Transfer Order)

19. Prior to my transfer from FCI-Oxford, I received three additional disciplinary reports for allegedly engaging in a sex act, writing another inmate and unauthorized possession of a Motrin, aspirin. With regard to my disciplinary reports in a letter dated July 14, 1988, from Niel Blumberg, M.D.P.A., Diplomat American Board of Psychiatry, Neurology and Forensic Psychiatry, addressed to prison officials at FCI-Oxford, advising them of my transsexualism and other mental disorders and concluding that unless I receive appropriate treatment for my problems, it is unlikely that my involvement in criminal activities would cease. Though, Defendants' here seem to imply that my non-violent, non-aggressive, fraud type

disciplinary infractions warrant my placement in a maximum security institution of the Bureau of Prisons. Officials at USP-Lewisburg were aware of these same facts, but still because of the danger to my safety, would not release me into the penitentiary environment. Furthermore, Defendant EDWARDS declares that he was advised of these facts before I ever reached USP-Lewisburg.

EXHIBITS 21 and 22 - (Letter from Niel Blumberg, M.D.P.A., Declaration of Calvin Edwards).

20. Defendant [sic] KURZYDLO, BRENNAN, DUBOIS and SMITH knew that the environment of a penitentiary would not necessarily offer me any additional security, benefits or otherwise serve a legitimate interest.

21. BUREAU OF PRISONS, HEALTH SERVICE MANUAL 6100.2 confers that transsexuals will ordinarily be placed in co-correctional facilities. However, neither Defendant QUINLAN, EDWARDS, BRENNAN, KURZYDLO, DUBOIS or SMITH adhered or observed this policy in designating me to institutions within the Federal Bureau of Prisons, including USP-Terre Haute. Moreover, Defendant QUINLAN has failed to make the policy effective or determine its' effectiveness, enforce its' provisions or reference it in any of the Federal Bureau of Prisons policies normally used to determine an inmates designation.

EXHIBIT 24 - (BUREAU OF PRISONS, HEALTH SERVICE MANUAL)

22. In fact, the Federal Bureau of Prisons, its' employees and agents believe and rely on Bureau of

Prisons, Security and Classification Manual when determining inmate's designations, including transsexuals.

EXHIBIT 25 - (ADMINISTRATIVE REMEDIES)

23. Bureau of Prisons, Security Classification and Designation Manuals essentially asserts certain criteria for determining an inmates security and custody level and assigns particular security and custody levels to federal institutions. However, the policy gives prison officials broad discretion in designating inmates and also provides a sliding scale. At all times mentioned in this declaration, USP-Lewisburg was a level 5, USP-Terre Haute, FCI-Petersburg and FCI-Oxford was a level 4. With regard to USP-Terre Haute though it was a level 4, because it is designed as a penitentiary it offered greater security than any other level 4 institution. At one point and now USP-Terre Haute is considered a level 5 institution.

EXHIBIT 26 - (BUREAU OF PRISONS, SECURITY AND DESIGNATION MANUALS)

24. On March 23, 1989 I was released into the general population at USP-Terre Haute, and assigned to Unite [sic] 3M. On April 1, 1989, approximately one week later between 9-10 p.m. an inmate I know only as D.C., entered my cell and asked me what I was going to do. Obviously, referring to having sex with him. I responded I wasn't going to do anything. I could tell that he had been drinking because his words were slurred and I could smell the alcohol on him. After I said I wasn't going to do anything, he just stared at me for a moment



(it seem like forever), than [then] he punched me in the face, knocking me back up against the locker and into the window. He continued to hit me and I kept trying to grab his hands and he said if you don't let my hands go I will use my feet. I kept holding his hand and saying "Why are you doing this?" So he raised his foot and started kicking me, that is when I saw the home made knife stuck in his sneaker, and let his hands go. He hit me a few more times before tearing and pulling my clothes off me, holding me down on the bed and forcibly raping me. Then he left. Before he left was the most terrifying moment, because for the time I saw the knife until he left I was frantic he was going to stab me.

After he left I just laid there for a few minutes, not knowing what to do, than I remembered hearing everybody yelling count time, so I got up and began to try and pull myself together before my cell mate returned. One thing I recall distinctly is there was blood on the mirror and it made me nervous. My face was swollen, my lips and nose were busted, there was a scratch on my back and there was some anal bleeding.

I heard my cell mate and another inmate coming so I washed my face, pushed the locker back, etc. When my cell mate and the other inmate (whom left immediately because it was count time) come in the cell and I could tell they already knew. After count several guys come and ask me what I was going to do - was I going to "snitch". I shouldn't "snitch" because wherever I went somebody would get me. Thank [sic] to make matters worst, D.C. came back, with his chest stuck-out and said, "These guys keep riding me, I guess I shouldn't have done that to you, you're a girl." At that point, I began to

openly cry and ask everybody to please leave me alone. Several days later I was moved to another unit. On April 7, 1989, I was placed in administrative detention, at which time I informed several prison officials of the rape. However, the only mention of the incident, is in a 90 day Review Report, dated February 1, 1990, stating I was assaulted. This Report also states: "It was the review committee's consensus that Farmer would project feminine characteristics in the general population. . . .

The medical department and psychological department agree that M[s] Farmer projects feminine characteristics, both mentally and physically. . . . it is the belief of the review team that M[s] Farmer will be perceived by other inmates as feminine and be pressured for sexual favors. . . . Lieutenant Kerr indicates that inmate Farmer may not actively pursue sexual relationships but may be pressured buy [sic] other inmates because of h[er] appearance.

#### EXHIBIT 27 - (90 DAY REVIEW - USP-Terre Haute)

25. While at USP-Terre Haute, I witnessed numerous assaults, fights and other acts of violence. There was enormous amounts of drugs and alcohol in the population. The environment of USP-Terre Haute is much more aggressive and violent, than either FCI-Petersburg or FCI-Oxford. I am aware of several inmates who were sexually assaulted at USP-Terre Haute, including Jeff Fies, who was forced to perform sex acts with other inmates and Courtney Moore, who received a cut from the tip of her neck straight down her spine. There were also work strikes, riots, etc. while I was at USP-Terre

Haute. Further, there were numerous inmates in protective custody because they believed the population of USP-Terre Haute posed a danger to their lives. Some of these inmates were LaRosa Richardson, Clinton Stiener, Roger Bartley, Ricardo Jackson, etc.

#### EXHIBIT 28 - (INMATE AFFIDAVITS)

26. Because of the inmates I witnessed receiving disciplinary transfers to and from USP-Terre Haute, I know without a doubt that Defendants BRENNEN, KURZYDLO, DUBOIS and SMITH knew USP-Terre Haute was a violent type institution. Inasmuch as inmates who commit violent acts at FCI-Oxford are often transferred to USP-Terre Haute and of course Defendant BRENNAN and KURZYDLO are involved in those transfers. While Defendant SMITH handled a slew of disciplinary transfers from USP-Terre Haute and Defendant DUBOIS reviewed administrative appeals, etc., presenting the environment of USP-Terre Haute. Furthermore, while I was at USP-Terre Haute, Defendant EDWARDS was the Warden for a short time.

27. During the entire period I was in USP-Terre Haute, I was sexually pressured by inmates even while in detention. A good example of the inmates at USP-Terre Haute is presented in an incident that occurred while I was returning from Court in Wisconsin during May, 1991. I was placed at USP-Terre Haute as a holdover and administrative segregated in their Special Housing Unit. In the cell next to me was an inmate from USP-Terre Haute general population who demanded that I masturbate him through the cell bars and when I refused he did

it himself, then demanded that I eat his semen. When I refused this too, he began to threaten me, telling me I didn't know who I was fucking with. I was messing up the game and if I went to recreation he was going to fuck me up. It was not uncommon to encounter these types of inmates during my incarceration at USP-Terre Haute.

I declare under penalty of perjury that the forgoing is true and correct.

3-13-92  
Date

/s/ Dee Farmer  
Dee Farmer

(Certificate of Service Omitted In Printing)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

Order 91-C-716-S

(Caption Omitted In Printing)

Plaintiff Dee Farmer was allowed to proceed *in forma pauperis* on his Eighth Amendment claim against defendants Edward Brennan, Dennis Kurzydlo, Larry E. DuBois, N.W. Smith, Michael Quinlan and Calvin Edwards. Plaintiff alleges in his complaint that the defendants were deliberately indifferent to his safety when they transferred him to the United States Penitentiary, Terre Haute, Indiana (USP-Terre Haute) on March 9, 1989.

An amended scheduling order was entered in the above entitled matter on December 20, 1991 requiring dispositive motions to be filed not later than February 15, 1992. Defendants timely moved for summary judgment pursuant to Federal Rules of Civil Procedure, Rule 56, on February 18, 1992 the first work day after February 15, 1992. The defendants submitted proposed findings of fact and conclusions of law, affidavits and a brief in support of the motion.

Plaintiff's response to defendants' motion for summary judgment was to be filed not later than March 9, 1992. On March 9, 1992 defendants received a document entitled, "Rule 56(f) motion in response to defendants' untimely motion for summary judgment". This document which was not received by the Court until March 18, 1992 requests that defendants' motion for summary judgment be denied until plaintiff receives defendant Quinlan's response to his second request for documents which was

to be filed not later than March 14, 1992. Since these documents, not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment, were not to be filed until after both plaintiff's dispositive motion and brief in opposition to defendants' motion for summary judgment, plaintiff's Rule 56(f) motion will be denied.

On March 17, 1992 defendants filed a motion for protective order staying discovery until their motion for summary judgment on the issue of qualified immunity has been decided. Defendants' motion for a protective order will be granted.

Plaintiff also filed a brief in opposition to defendants' motion for summary judgment, an affidavit and a cross motion for summary judgment on March 18, 1992. Although plaintiff's brief in opposition to defendants' motion for summary judgment and his cross motion for summary judgment are untimely they will be considered.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a



genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff is an inmate currently confined at the United States Medical Center for Federal Prisoners, Springfield, Missouri (USMCFP). He was confined at the Federal Correctional Institution, Oxford, Wisconsin (FCI-Oxford) from January 27, 1988 until March 9, 1989.

At all times material to this action defendant Edward Brennan was the warden and defendant Dennis Kurzydlo was a unit manager at FCI-Oxford. Defendant Calvin Edwards was the warden at USP-Terre Haute from December 1987 until May 1989.

At all times material to this action defendant Larry E. DuBois was the Regional Director and defendant N.W. Smith was the Correctional Services Administrator of the North Central Region, Federal Bureau of Prisons. Defendant J. Michael Quinlan was the Director of the Federal Bureau of Prisons.

On January 25, 1989 plaintiff was found guilty by a disciplinary hearing officer at FCI-Oxford of Attempting to Give Anything of Value to Another. Disciplinary sanctions included a recommendation for a disciplinary transfer. On January 31, 1989 defendant Kurzydlo prepared plaintiff's progress report and on February 6, 1989 he requested that plaintiff be transferred to USP-Terre Haute. Defendant Kurzydlo believed that USP-Terre Haute was well equipped to handle the problems and needs presented by plaintiff.

At the time of plaintiff's transfer on March 9, 1989 defendant Calvin Edwards was the warden at USP-Terre Haute. Plaintiff never personally or through correspondence advised defendant Edwards that he was concerned for his safety. Defendant Edwards had no reason to believe that plaintiff could not function safely within the population at USP-Terre Haute. None of the defendants had actual knowledge that there was a threat to plaintiff's safety at USP-Terre Haute.

On April 1, 1989 plaintiff [sic] alleges that he was sexually assaulted by another inmate. On April 7, 1989 plaintiff was placed in administrative detention pursuant to a directive from the North Central Regional Office pending a hearing concerning his HIV positive status.

#### CONCLUSIONS OF LAW

Plaintiff claims that his Eighth Amendment rights were violated by the defendants when they transferred him to USP-Terre Haute on March 9, 1989. Since there is no genuine dispute of any material fact this case can be decided as a matter of law. The failure of prison officials

to protect an inmate from assault by another inmate may violate an inmate's Eighth Amendment rights if the officials were deliberately indifferent to a strong likelihood of attack. *Meriweather v. Faulkner*, 821 F. 2d 408, 417 (7th Cir. 1987), *cert. denied* 108 S.Ct. 311 (1987).

Prison officials are liable under the Eighth Amendment if they had actual knowledge of a threat to an inmate's safety and failed to take action to prevent the danger. *McGill v. Duckworth*, 944 F. 2d 344, 349 (7th Cir. 1991). A prisoner normally proves actual knowledge of impending harm by showing that he complained to prison officials about a specific threat to his safety. *Id.* The officials' failure to prevent an attack of an inmate must be deliberate or reckless in a criminal sense. *Santiago v. Lane*, 894 F. 2d 218, 221 (7th Cir. 1990).

Defendants did not know that plaintiff would be in imminent danger of attack if he were transferred to USP-Terre Haute. Plaintiff never expressed any concern for his safety to any of the defendants. Since defendants had no knowledge of any potential danger to plaintiff, they were not deliberately indifferent to his safety. Accordingly plaintiff's Eighth Amendment rights were not violated and defendants' motion for summary judgment will be granted. Plaintiff's cross motion for summary judgment will be denied.

Plaintiff has filed motions for telephonic depositions, photographic discovery and to compel discovery. These motions must be denied as moot. Plaintiff's motions for extension of time to name witnesses, file documents and exclude certain evidence are also denied as moot.

# ORDER

IT IS ORDERED that defendants' motion for a protective order is GRANTED.

IT IS FURTHER ORDERED that plaintiff's Rule 56(f) motion and cross motion for summary judgment are DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for telephonic depositions, photographic discovery and to compel discovery are DENIED as moot.

IT IS FURTHER ORDERED that plaintiff's motions to name additional witnesses, file documents and exclude certain evidence are DENIED as moot.

IT IS FURTHER ORDERED that defendants' motion for summary judgment is GRANTED.

*Farmer v. Brennan, et. al.*, 91-C-716-S

IT IS FURTHER ORDERED that judgment be entered in favor of the defendants and against the plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 20th day of March, 1992.

BY THE COURT:

/s/ John C. Shabaz  
John C. Shabaz  
District Judge

(Certificate Of Service Omitted In Printing)

## JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

DOCKET NUMBER 91-C-716-S

(Caption Omitted In Printing)

- [ ] **Jury Verdict.** This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.
- [X] **Decision by Court.** This action came on for consideration before the Court with the judge named above presiding. The issues have been considered and a decision has been rendered.

## IT IS ORDERED AND ADJUDGED

that judgment is entered in favor of the defendants, Edward Brennan, Dennis Kurzydlo, Larry E. Dubois, N.W. Smith, Michael Quinlan and Calvin Edwards, against the plaintiff Dee Farmer DISMISSING plaintiff's complaint and all claims contained therein with prejudice and costs.

APPROVED AS TO FORM  
this 20th day of March, 1992.

/s/ John C. Shabaz  
JOHN C. SHABAZ  
District Judge

(Certificate Of Service Omitted In Printing)

## UNITED STATES COURT OF APPEALS

*For the Seventh Circuit  
Chicago, Illinois 60604*

SUBMITTED: August 6, 1992  
August 7, 1992

*Before*Hon. JOHN L. COFFEY, *Circuit Judge*Hon. JOEL M. FLAUM, *Circuit Judge*Hon. KENNETH F. RIPPLE, *Circuit Judge*

DEE FARMER,		Appeal from the United
Plaintiff-Appellant,		States District Court for
No. 92-1772	v.	the Western District of
		Wisconsin.
EDWARD BRENNAN,		No. 91 C 716
DENNIS KURZYDLO,		John C. Shabaz, Judge.
LARRY E. DUBOIS, et al.,		
Defendants-Appellees.		

This matter comes before the court for its consideration upon the request for the following documents:

1. **PETITION FOR LEAVE TO FILE AND TO PROCEED ON APPEAL IN FORMA PAUPERIS** filed herein on 5/28/92, by the appellant.

2. **"MOTION TO CONSOLIDATE CASES"** filed herein on 7/17/92, by the appellant.

This court has carefully reviewed the final order of the district court, the record on appeal and the appellant's motion. Based on this review, the court has determined that any issues which could be raised are insubstantial and the filing of briefs would not be helpful



to the court's consideration of the issues. See *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (*per curiam*) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument). Accordingly,

**IT IS ORDERED** that the appellant's motion for leave to proceed on appeal in forma pauperis is **DENIED** and the district court is summarily **AFFIRMED**.

**IT IS FURTHER ORDERED** that the motion to consolidate cases is **DENIED AS MOOT**.

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**SUPREME COURT OF THE UNITED STATES**

No. 92-7247

Dee Farmer,

Petitioner

v.

Edward Brennan, Warden, et al.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Seventh Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. Rule 29 does not apply.

October 4, 1993

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